Supreme Court of the United States.

OCTOBER TERM, 1902.

THE STATE OF MISSOURI,
COMPLAINANT,
vs.
THE STATE OF ILLINOIS ET AL.

No. 4, Original.

MOTION TO MODIFY ORDER FOR TAKING TESTIMONY.

Now come the solicitors for plaintiff and defendants in the above-entitled cause, and move the court to modify the order for the appointment of a Special Commissioner to take testimony in this case, entered November 17, 1902, so that the second paragraph of said order will read as follows:

It is further ordered, That the taking of testimony on complainant's behalf shall begin on the fifth day of March, A. D. 1903, at such place as counsel for complainant may designate, ten days' notice thereof to be given counsel for defendants, and shall be concluded on or before the thirtieth day of April, A. D. 1903; that the taking of testimony on behalf of defendants shall commence on the first day of May, and be concluded on or before the first

day of July, A. D. 1903, ten days' notice of the place where such testimony will be taken being given to counsel for complainant; that testimony in rebuttal shall then be taken, five days' notice of the place being given, and shall be concluded on or before the fifteenth day of July, A. D. 1903; and thereafter defendants may take further testimony until the first day of August, A. D. 1903, at which time the taking of testimony in the cause shall be closed.

This motion is submitted on account of the serious illness of Attorney General Crow, one of the solicitors on behalf of the complainant.

WILLIAM M. SPRINGER,
On behalf of the Solicitors for the Plaintiff and Defendants.

FILED
APR 9 1900
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1899.

No. [illegible], ORIGINAL.

THE STATE OF MISSOURI,
COMPLAINANT,

v.

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,
DEFENDANTS.

DEMURRER, ANSWERS, AND EXHIBITS.

WASHINGTON, D. C.
Gibson Bros., Printers and Bookbinders.
1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

NUMBER 7, ORIGINAL.

THE STATE OF MISSOURI, COMPLAINANT,

v.

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

Demurrer of Defendants to Bill of Complaint.

Now comes the State of Illinois by its Attorney General, Edward C. Akin, and the Sanitary District of Chicago, by its attorneys, and demur to the Bill of Complaint filed herein, and say, that the said Bill of Complaint and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said State of Missouri to have and maintain its aforesaid action against the said State of Illinois and the Sanitary District of Chicago, and that said Defendants are not bound by the law of the land to answer the same; and the said Defendants, according to the form of the Statute in such case made and provided, state and show

to the Court here the following causes of demurrer to the said Bill of Complaint:

FIRST: That this Court has no jurisdiction of either the parties to, or of the subject matter of, this suit, because it appears upon the face of said Bill of Complaint that the matters complained of, as set forth therein, do not constitute, within the meaning of the Constitution of the United States, any controversy between the State of Missouri and the State of Illinois, or any of its citizens.

SECOND: That the matters alleged and set forth in said said Bill of Complaint show that the only issues presented therein arise, if at all, between the State of Illinois and a public corporation created under the laws of said State, and certain cities and towns, in their corporate capacity as such, in the State of Missouri, and certain persons in said State of Missouri, residing on or near the banks of the Mississippi river, and which matters so stated in said Bill of Complaint, if true, do not concern the State of Missouri as a corporate body or State.

THIRD: That said Bill of Complaint shows upon its face that this suit is in fact for and on behalf of certain cities and towns in said State of Missouri, situate on the banks of the Mississippi river, and certain persons who reside in said State on or near the banks of said river; and that, although the said suit is attempted to be prosecuted for and in the name of the State of Missouri, said State is, in effect, loaning its name to said cities and towns and to said individuals, and is only a nominal party to said suit, and that the real parties in interest are the said cities and towns in their corporate capacity as such, and said private persons or citizens of said State.

FOURTH: That it appears upon the face of said Bill of Complaint, that the said State of Missouri, in her right of sovereignty, is seeking to maintain this suit for the re-

dress of the supposed wrongs of certain cities and towns in said State, in their corporate capacity as such, and of certain private citizens of said State, while under the Constitution of the United States and the laws enacted thereunder, the said State possesses no such sovereignty as empowers it to bring an original suit in this Court for such purpose.

FIFTH: That it appears upon the face of said Bill of Complaint, that no property rights of the State of Missouri are in any manner affected by the matters alleged in said Bill of Complaint; nor is there any such property right involved in this suit as would give this Court original jurisdiction of this cause.

SIXTH: That in order to authorize this Court to maintain original jurisdiction of this suit as against the State of Illinois, or against any citizens of said State, it must appear that the controversy set forth in the Bill of Complaint and to be determined by this Court, is a controversy arising directly between the State of Missouri and the State of Illinois, or some of its citizens, and not a controversy in vindication of the alleged grievances of certain cities and towns in said State or of particular individuals residing therein.

SEVENTH: That said Bill of Complaint is in other respects uncertain, informal and insufficient, and that it does not state facts sufficient to entitle the said State of Missouri to the equitable relief prayed for in said Bill of Complaint.

Wherefore, for want of a sufficient Bill of Complaint in this behalf, the said Defendants pray judgment; and that the said State of Missouri may be barred from having or maintaining the aforesaid action against said Defendants, and that this Court will not take further cognizance of

this cause, and that the said Defendants be hence dismissed with their costs.

THE STATE OF ILLINOIS,
By EDWARD C. AKIN,
Attorney General of the State of Illinois.

CHARLES C. GILBERT,
SAMUEL M. BURDETT,
Attorneys of the Sanitary District of Chicago.

WILLIAM M. SPRINGER,
Of Counsel for Defendants.

I, William M. Springer, of counsel for the said Defendants, do certify that the above demurrer is, in my opinion, well founded in point of law.

WILLIAM M. SPRINGER,
Of Counsel for Defendants.

I, William M. Springer, of counsel for said Defendants, upon my oath do say, that the above demurrer is not interposed for delay.

WILLIAM M. SPRINGER,
Of Counsel for Defendants.

Subscribed and sworn to before me this 17th day of March, 1900.

[L. S.]

EDWD. N. LEWIS,
Notary Public.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

NUMBER 7, ORIGINAL.

STATE OF MISSOURI, COMPLAINANT,

v.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

Separate Answer of The State of Illinois to the Bill of Complaint of the said State of Missouri.

Now comes the State of Illinois by Edward C. Akin, Attorney General of the State of Illinois, not waiving the demurrer filed herein, and in which this Defendant joins but wholly relying thereon, for answer to so much of said Bill of Complaint as it is advised it is material and necessary for this Defendant to answer unto, does say:

That this Defendant, the State of Illinois, has by its Attorney General, read the separate answer of the Sanitary District of Chicago, its co-defendant, and that in so far as said separate answer admits certain allegations contained in the Complainant's Bill of Complaint, filed herein, this Defendant, the State of Illinois, makes

the same admissions in this its separate answer without repeating the same admissions to said answer of its co-defendant thereon. That this Defendant, the State of Illinois, as to all allegations contained in said Bill of Complaint, which are specifically denied by the separate answer of its co-defendant, filed herein, unites in such denial and makes said Bill of Complaint its own in this respect. And furthermore, this Defendant unites with its co-defendant in making the allegations of new matter by way of defense set up by its co-defendant in its answer, filed herein, and makes said allegations its own in so far as this Defendant is required to make answer to said Bill of Complaint; and this Defendant refers this Honorable Court to the separate answer of its co-defendant, filed herein, and makes said answer its own, in so far as this Defendant, the State of Illinois, is required to make answer in this cause.

This Defendant avers that the laws of the State of Illinois, mentioned in its co-defendant's answer, and filed as exhibits therein, were passed by the General Assembly of the said State of Illinois, at the times mentioned, in pursuance of the authority vested in said General Assembly, and that the said acts are valid under the Constitution of the State of Illinois, and that said General Assembly was clothed with ample authority by the Constitution of the State of Illinois to pass said laws; and that the passage thereof was a proper and constitutional exercise of the power conferred upon said General Assembly.

And for further answer herein, this Defendant avers that the Sanitary District of Chicago, its co-defendant, in exercising the authority conferred upon it by the laws of the State of Illinois, is not subject to the control of the executive department of the State of Illinois, and that it is not within the power of the Governor of said State to

control the officers of its co-defendant, said Sanitary District of Chicago, in the performance of their duties as such officers.

And this Defendant, the State of Illinois, admits that under said laws of the State of Illinois, it was the duty of the Trustees of the Sanitary District of Chicago to notify the Governor of the said State of Illinois of the completion of the said canal or channel, and that it was the duty of the Governor of the State of Illinois to appoint three commissioners to examine said canal or channel, as alleged in Complainant's Bill of Complaint. And this Defendant alleges that prior to the time when the Complainant in this case presented its motion in this Honorable Court, for leave to file its Bill of Complaint herein, that the Governor of said State had appointed said commissioners as required by the laws of said State, and the said commissioners had reported to him that they had examined said canal or channel, and had found it in all respects completed in conformity with law, and that the Governor of said State, prior to said time, issued a permit to the Trustees of the said Sanitary District of Chicago, to turn the water and sewage of said drainage district into the Des Plaines and Illinois Rivers; and that said Trustees did, prior to the time aforesaid, turn said water and sewage into said Rivers, as this Defendant is informed and believes, as will more fully appear to this Honorable Court, by reference to the separate answer of the said Sanitary District of Chicago, filed herein; and as to all said allegations in the said separate answer of the Sanitary District of Chicago, filed herein, in reference to the appointment of said commissioners, their report to the Governor, and the action of the Governor of said State of Illinois in the premises, this Defendant avers that the allegations in the answer of its co-defendant are true;

and that the said acts of the Governor of the State of Illinois were all done and performed prior to the 17th day of January, 1900, when the Complainant herein moved this Honorable Court for permission to file said Bill of Complaint.

Therefore this Defendant avers that the State of Illinois cannot now be enjoined or restrained from issuing to its co-defendant herein, permission or authority to do and perform the acts aforesaid, or to allow them to be done.

This Defendant, the State of Illinois, further admits as alleged in said Bill of Complaint, that by the general provisions of the Act of the State of Illinois, creating the Sanitary District of Chicago, the said canal or channel to be constructed by said Sanitary District is at all times subject to the control and supervision of the State of Illinois and of her authorities. But this Defendant avers that said control and supervision can only be exercised by and through the law-making power of the said State of Illinois; and that the only authorities of said State, authorized by said laws to control and supervise said canal or channel are the Board of Trustees of the Sanitary District of Chicago, their officers, agents and employees.

And this Defendant, the State of Illinois, denies all unlawful combination in said bill charged without that any other matter or thing material for it to make answer to, and not herein sufficiently answered, avoided, or denied, is true, to the knowledge or belief of this Defendant. All of which matters and things this Defendant is ready to aver and prove, as this Honorable Court shall direct, and it prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

THE STATE OF ILLINOIS,
By EDWARD C. AKIN,
Attorney-General of the State of Illinois.

UNITED STATES OF AMERICA.
In the
Supreme Court of the United States.

On this 7th day of March, 1900, before me, James T. Jones, Clerk of the Circuit Court of the United States for the Southern District of Illinois, personally appeared John R. Tanner, Governor of the State of Illinois, one of the Defendants in the foregoing Bill of Complaint above named, [who] being by me duly sworn, deposes and says, that he is the Governor of the said State of Illinois, and familiar with its affairs and business; that he has read the foregoing separate answer of this Defendant, the State of Illinois, and also the separate answer of its co-defendant, the Sanitary District of Chicago, and that he knows the contents thereof, and the same are true of his own knowledge, except as to the matters stated on information and belief, and as to those matters he verily believes them to be true.

JOHN R. TANNER,
Governor of the State of Illinois.

Subscribed and sworn to before me by John R. Tanner this 7th March, 1900.

[L. S.] JAMES T. JONES,
Clerk Circuit Court U. S. South. Dist. Ills.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

NUMBER 7, ORIGINAL.

STATE OF MISSOURI, COMPLAINANT,

v.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

Separate Answer of the Sanitary District of Chicago to the Bill of Complaint of the State of Missouri.

Now comes the Sanitary District of Chicago, one of the Defendants in the above-entitled cause, not waiving the demurrer to the said Bill of Complaint heretofore filed in this cause, but wholly relying thereon, for answer to so much of said Bill of Complaint as it is advised is material and necessary for this Defendant to answer unto, does say:

That it admits that the Complainant herewith is one of the States of the United States, and that the State of Illinios, one of the Defendants herein, is one of the States of the United States, and that this Defendant, the Sani-

tary District of Chicago, is a public corporation, organized under the laws of the State of Illinois and located as in said bill described, and is a citizen of said State. This Defendant further admits that the population of the State of Missouri is upwards of three millions of people, and that said State lies on the west bank of the Mississippi River, a public, navigable, and running stream, having a frontage on said stream of over four hundred miles; that by act of Congress providing for the admission of Illinois and Missouri as States of the Union, it was declared that the western boundary of Illinois and the eastern boundary of Missouri should be the middle of the main channel of the Mississippi River; that the shores of the Mississippi River, where its waters form the Missouri and Illinois boundaries, and the soil under the waters thereof, were not granted by the Constitution of the United States, but were reserved to the States of Illinois and Missouri respectively.

This Defendant further admits that the States of Missouri and Illinois, each have concurrent general jurisdiction over the waters of the Mississippi River, forming the boundary between them, and each of said States has exclusive territorial jurisdiction over that portion adjacent to its own shore; and that the Illinois River empties into the Mississippi River at a point above the City of St. Louis, on the Illinois side of said Mississippi River.

This Defendant further admits that within the territory of the State of Missouri and on the banks of said Mississippi River, and below the mouth of the Illinois River are many cities and towns in the State of Missouri, and many thousands of persons who rely upon the waters of said Mississippi River, in their regular, natural, and accustomed flow, for their daily necessary supply of water, for drinking and all other domestic, agricultural,

and manufacturing purposes, and for watering stock and animals of all kinds, and that said Mississippi River has been flowing in its regular course, and has been used for the purposes aforesaid by the inhabitants of said State of Missouri for a time whereof the memory of man runneth not to the contrary. But whether the river and its waters, and the use thereof, for drinking, agricultural, and manufacturing purposes, in their accustomed and natural flow, are indispensable to the life, health, and business of many thousands of inhabitants of the said State of Missouri, and whether said inhabitants are compelled to use said waters for said purposes, this Defendant neither admits nor denies, but leaves said Complainant to make proof thereof; but said Defendant denies that said river and its waters, and the use thereof, for drinking, agricultural, and mechanical purposes are of value to the State of Missouri as a State or as a body politic.

This Defendant further admits that the cities and towns below the mouth of the said Illinois River, within the territory of the said State of Missouri, do by means of waterworks, water-towers, and intakes, built and constructed for that purpose, supply the inhabitants of said cities and towns with an adequate supply of water for drinking and other domestic uses, from the said Mississippi River; but whether said cities and towns are compelled to use the water for drinking and other domestic purposes, or whether said cities and towns are furnished with an adequate supply of pure and wholesome water, fit and healthful for drinking, and other domestic purposes and uses, from said Mississippi River, this Defendant neither admits nor denies, but leaves Complainant to make proof thereof.

Further, this Defendant neither admits nor denies that

said waterworks systems are constructed with reference to said Mississippi River, for the purpose of taking water therefrom, and not from any other source, and leaves Complainant to make proof thereof.

This Defendant admits that heretofore, to wit: In 1889, the State of Illinois enacted a law known as the Sanitary District Act, together with an act for the improvement of the Illinois and Des Plaines Rivers, and that under said act of said State, the said defendant corporation, known as the Sanitary District of Chicago, was organized and is now existing and operating, and that by the express terms of said act, any canal or drainage corporation organized in accordance with its provisions may have conditions, restrictions, or additional requirements placed on said corporation, or the act, authorizing the creation of said corporation may be amended or repealed, and that by the express provisions of said act, before any water or sewage shall be admitted into any channel constructed under said act, the trustees of said channel should notify the Governor of the State of Illinois of the completion of said channel, and that the Governor of the State of Illinois should appoint three commissioners to examine said channel or canal and report to the Governor of said State of Illinois, whether the same complied with the said act of the State of Illinois; and that if it does, the Governor should authorize the water and sewage to be turned into said canal or channel; and without the said permit said water and sewage cannot be so turned in; and by the general provisions of said act, said channel is at all times subject to the control and supervision of the State of Illinois and her authorities; but this Defendant avers that such control and supervision can only be exercised by the law-making power of said State.

This Defendant further admits that the Chicago River

is situate in the basin of Lake Michigan, and has forks or branches flowing through the City of Chicago and into Lake Michigan, and that the natural drainage of Chicago *is or has been into Lake Michigan, but this Defendant* denies that the drainage and sewage of the territory embraced in this Defendant's district, namely, the Sanitary District of Chicago, is led or flows into the Chicago River and Lake Michigan; but this Defendant avers and will establish the fact by sufficient proof to the satisfaction of this Honorable Court, if permitted to do so, that the greater portion of the water and sewage of said territory has been, for many years discharged into the Des Plaines and Illinois Rivers, in the manner which will be pointed out and particularly described hereinafter in its answer.

This Defendant, further answering admits, as will be hereinafter more fully shown, that it has constructed a drainage canal, having origin and extent described in said bill; that in the construction of said canal or drain, this Defendant cut through the natural ridge or water-shed, which divides the basin of Lake Michigan from the basin of the Des Plaines and Illinois Rivers, and of the Mississippi River. The origin, extent, and public history of said drainage channel will hereafter be more fully recited in this answer.

But this Defendant denies that all or any considerable portion of the sewage and drainage of the territory embraced in its said district is led into or flows into the Chicago River and Lake Michigan, and to this allegation this Defendant will make fuller answer as hereinbefore stated.

This Defendant expressly denies that its acts and doings in Complainant's Bill mentioned, and hereinafter described, have been without legal authority, but on the contrary says that each and every of its acts have been in strict pursuance of authority given it by the State of Illinois.

This Defendant further admits, not alone that it has about completed the said drainage channel, but states that it has completed the same, and that it is about to receive and has received into said channel the sewage matter and filth of the Sanitary District of Chicago, which embraces nearly the entire City of Chicago, and a portion of the County of Cook, and that it is about to cause and has caused said sewage and filth to flow through said channel or drain towards and into the Des Plaines River; but that the said sewage and filth will be carried into said Mississippi River, and that it will pass by the homes of the inhabitants of the State of Missouri, or of the cities and towns and their waterworks, within said State, this Defendant denies.

This Defendant admits that the sewage matter and filth which it is now receiving and causing to flow through said drainage channel into said Des Plaines River, is that which is created by the population and activities and industries of the district of this Defendant; that among those industries are stockyards, slaughtering establishments, and rendering establishments, but not distilleries; and this Defendant denies that noxious matters created by said establishments will be received into said channel, but on the contrary thereof, this Defendant alleges that the said noxious matters are in large part, if not wholly, rendered innocuous before being received into the sewage system of the City of Chicago and of said drainage district, and this Defendant denies that there are any distilleries within the said district. This Defendant further denies that it is true, as stated in said Bill of Complaint, that the City of Chicago has been discharging its sewage matter and filth into said Chicago River and into Lake Michigan, in such large quantities, that much of it has accumulated upon the bed and along the sides of said

river, and upon the bed of said lake, near the shores thereof; and it especially denies that the plan adopted and in operation by this Defendant will loosen said matter and filth so alleged, to be deposited upon the bed of the lake and the sides of the river, and the shores of said river and lake and cause it to flow into and towards said Des Plaines River; but on the contrary thereof, Defendant says, as it is more particularly hereinafter set forth, that for many years a large portion of the sewage matter arising in said drainage district, has been turned into the Chicago River, and has been pumped into a drainage channel heretofore constructed, and has flowed into the Des Plaines River. This Defendant especially denies that the plan of operation adopted by it will loosen any accumulated matter or filth, but on the contrary thereof, it says, that it denies the presence of said accumulated matter and filth, at the points and to the extent in said bill alleged, and states that during a long time preceding the opening of Defendant's channel, such of the sewage and filth of said district as has been discharged into the Chicago River and flowed thence into Lake Michigan, had been taken up and dissipated by the cross-currents of Lake Michigan, and carried to distant points, and has wholly lost its noxious character, and that much of said matter as might from time to time have accumulated in the past has been covered upon the bottom of said lake by the deposits thereon of earth excavated from the foundations of the city, and deposited in said lake for the making of new lands.

This Defendant denies that if it shall carry its plans into execution, and shall carry all the sewage and alleged noxious matters arising in said Sanitary District into the waters of the Des Plaines River, through said drainage channel, that the waters of the Mississippi River will of a certainty or at all be poisoned and polluted thereby, as

alleged in said Bill of Complaint; and it expressly denies that the carrying out of its plans will destroy the flow and adaptability of the waters of the Mississippi River, along the territory of Complainant, for domestic or other uses. And it expressly denies that such use will render wholly valueless and entirely worthless the said waterworks systems of the cities and towns located in State of Complainant; or that it will injure and destroy the business of the cities and towns in State of Complainant, in furnishing and selling water to private consumers, or that it will disable them from furnishing water for domestic or any other purposes. And this Defendant expressly denies that it will injure the property and business of said cities and towns, or that it will establish and create as to them a direct and continuing nuisance, with the results in said bill described, or any injurious results; and it expressly denies that any damage will result to said Complainant or to said cities and towns, or inhabitants of Complainant, from such use and carrying out of the plans of this Defendant.

This Defendant neither admits nor denies, as alleged by Complainant in its Bill of Complaint, that the filth and sewage of the Sanitary District of Chicago, which will be turned into the Des Plaines River, will amount to 1,500 tons daily, but leaves the Complainant to make proof thereof; but this Defendant denies that said filth and sewage, or any part thereof, will be deposited in the bed or soil of the Mississippi River, within the jurisdiction of Complainant; and this Defendant denies that the filth and sewage of the said Sanitary District of Chicago will pollute and poison the waters of the said Mississippi River to such an extent as to render said waters unwholesome, unfit, and unhealthful for drinking and other domestic uses, by the inhabitants in the territory of Complainant,

or unfit for watering stock and for manufacturing purposes, and this Defendant denies that said sewage from the Sanitary District of Chicago will poison and pollute the waters of the said Mississippi River along the territory of Complainant with germs of diseases of various kinds, or with any germs of disease whatever; and this Defendant denies, as alleged in said Bill of Complaint, that this Defendant will cause a continuing nuisance in the Mississippi River, to the detriment, and irreparable and continuing damage and injury of the said State of Missouri, or an irreparable injury to the lives and health of the citizens or inhabitants of the said State of Missouri; but on the contrary, this Defendant expressly avers, and if permitted, will prove to this Honorable Court, that the turning into the Des Plaines River of the sewage of the Sanitary District of Chicago, together with 300,000 cubic feet per minute of the pure water of Lake Michigan, which will accompany the same, will greatly improve the quality of the waters of the Illinois and Mississippi Rivers, and also greatly improve the conditions which existed prior to the time said sewage and water were turned into said Des Plaines and Illinois Rivers, as will more fully appear hereafter in this answer.

And for other and further answer in this behalf, this Defendant says that the Sanitary District of Chicago is a corporation organized and existing under the laws of the State of Illinois; that it is wholly within the County of Cook, in said State; with power to extend its operations and works beyond the territorial limits of its existence, as will be more particularly hereinafter shown.

This Defendant alleges that in the year 1822 the proper authorities of the United States enacted a law granting to the State of Illinois the right for a route for a canal connecting the Illinois River with the southern bend of Lake Michigan; that on the 2d day of March, 1827, a further

act of Congress of the United States was approved, and by which a quantity of land equal to five sections in width on each side of the canal proposed by said act, was granted to the State of Illinois to aid in the construction of said canal. That subsequently thereto the State of Illinois entered upon the construction of said canal according to various acts of the legislature, and prosecuted the work of completing said canal, so that it was long since opened from Bridgeport to La Salle upon the Illinois River. That there were in the course of the construction of said canal divers levels provided, one of which was known as Summit Level, properly connected with the remaining course of said canal. That a large quantity of the water necessary to supply the said Summit Level of said completed canal was obtained by means of a pump or pumps at or near Bridgeport in Cook County, Illinois, by which the waters of the Chicago River were pumped and discharged into the said Summit Level of said canal. That said pumping was begun in the year 1848 and continued until the year 1871. That said pumps were operated by and at the expense of the State of Illinois, in order to supply said canal with water. But during said period, viz., from 1865 to 1871, the City of Chicago assisted in bearing the expenses of such work, and used the said Chicago River and said canal for the discharge of its sewage, and the said arrangement continued until the year 1871. That in 1865 the Legislature of Illinois by law authorized the City of Chicago to deepen the said Illinois and Michigan Canal, and thereby effect a flow by gravity from the Chicago River into said Summit Level. Reference is hereby made to said public law of 1865, and the same will be exhibited to this Court upon the hearing of this cause, and the same is hereby made a part of this answer and is marked "Exhibit A." And this Defendant avers and

shows the Court that in and by said law of 1865, the City of Chicago was authorized to deepen and did promptly thereafter deepen the said Illinois and Michigan Canal for the express purpose of disposing of the sewage received into the said Chicago River, and did thereafter use said canal for said purpose. That the said Chicago River itsel has in ordinary times no current that is perceptible, but maintains a level with the water of Lake Michigan, and is rather an estuary of said Lake than a river, except in case of flood, when it has a sluggish current settling, not by descent, but by propulsion into the Lake. That since a time prior to 1865, and since the year 1849, since when a large share of the drainage of the City of Chicago has been into said Chicago River, and that from that time until now, by means of said pumps at Bridgeport, and the said deep cut made in pursuance of said act of 1865, the discharge of nearly all of the sewage of the Chicago River has been into said canal and through and down said canal to the Des Plaines River at Lockport.

And this Defendant further answering, says, that the population of the City of Chicago in the year 1890, as determined by the federal census, was about 1,100,000. That from that time until the filing of the Bill of Complaint in this case, there has been an increase of 400,000. That of the 1,500,000 people thus embraced within the limits of the City of Chicago, the sewage of 200,000 of them has been discharged at other points than into the Chicago River, and that the sewage of the residue of the population of said city has at all times been discharged into the Chicago River, and that the whole of the sewage of said residue of said people has been carried by the said pumps into the said deep cut during the whole period aforesaid into the said canal and into the said river, save and except upon such occasions of flood or

unusual instances, few in number, when the current of the river was set into the lake, causing the lake to be roily and polluted near the mouth of said river, and along the shores of Lake Michigan, until the subsidence of said flood.

This Defendant, further answering, says, that such has been, in the period aforesaid, the increase of population and extent of sewage discharged into the Chicago River, that in 1881 it was found necessary to aid the gravity flow of water from the Chicago River into the deep cut by the establishment of larger pumps at Bridgeport, which is a point within the limits of said Sanitary District, in the said County of Cook, and that since said year 1881, a period of nineteen years, the said deep cut and the said pumps have been continuously working, carrying away the said sewage into the said deep cut, and through said canal into the Des Plaines River. And this Defendant alleges that the work of deepening said canal by the deep cut, as it is popularly called, was so extensive that the City of Chicago expended thereon the sum of about three million dollars, viz: $2,955,340; and also a very great sum of money in the erection and operation of the pumps at Bridgeport, as aforesaid, and that all of this work was open and notorious, and in the sight of all men.

And Defendant, further answering, says, that in the year 1889 the Legislature of the State of Illinois passed an act entitled, "An Act to Create Sanitary Districts, and to Remove Obstructions in the Des Plaines and Illinois Rivers," which was duly approved on the 29th day of May, and went into force and effect on the 1st day of July thereafter. That immediately thereafter such proceedings were had that a Sanitary District was formed under the provisions of said Act, which is the district of

this Defendant in this cause. That said district, duly officered, has been in existence since January of the year 1890. Special reference is made to said Act, a copy of which is attached to this answer for greater accuracy, and made a part hereof, and marked "Exhibit B."

And this Defendant, further answering, says, that in pursuance of said act it immediately entered on the discharge of the duties imposed upon it by said act. That it adopted a general plan of construction for the channel, to be of the size, dimensions, and general character mentioned in said act, of 600,000 cubic feet of water per minute. That said channel originates at Robey Street in the City of Chicago, and passes thence through the Counties of Cook, Will and Du Page, by the best determinable lines to Lockport on the Des Plaines River. That in and about preparing for the construction of said channel, this Defendant, in the most open and notorious manner acquired by deed, where possible, the right of way for its various structures, placing the said deeds for said premises upon record in the Recorder's Offices, of Cook, Will and Du Page Counties, as obtained, beginning in the year 1891. That where necessary it instituted condemnation proceedings in the proper courts, of Du Page, Will and Cook Counties. That all of these, its said acts were open and notorious, and this Defendant expressly avers that by the act incorporating it, all of its acts and doings are matters of public record, whereof people and courts are required to take notice, and that its records are and at all times have been open to the inspection of all citizens, and of all persons interested therein. That there are a number of lines of railway passing between the cities of Chicago and St. Louis, one of the cities in the State of Complainant, near to and within plain sight of the work progressing from time to time upon said channel, traversed

by hundreds of thousands of citizens day and night. That such has been the extent and character of the work performed by this Defendant within the time stated, that it became a matter of notoriety to all persons traversing said roads, and that such was the magnitude of the undertaking, the difficulties experienced and overcome, the greatness and scope of the work, that it became noted to all the world, and the subject of innumerable dispatches, communications and publications made from time to time in all cities of the United States. That in the prosecution of this work it has occupied more than four thousand acres of land in the County of Cook alone, more than five hundred acres of land in the County of Du Page, and nearly three thousand acres in the County of Will, at a total cost of more than three million dollars. That during the whole of the nine years since the institution of work upon this enterprise, as aforesaid, this defendant, the Sanitary District of Chicago, has expended upon said work more than thirty-three million dollars. That these expenditures have all been openly, notoriously and of record made in and about the public interest.

And this Defendant, further answering, says, as it has heretofore said, that it had completed its said channel, prior to the filing of the Bill of Complaint in the said cause. That that which physically prevented the opening of the said channel, was but the interposition of a few cubic yards of earth left to protect the work and workmen from the inflow of the Chicago River. That these were removed on the 2d day of January, 1900; and the water turned from the Chicago River into said channel and down to the controlling works at Lockport, filling the said drainage channel for a distance of twenty-eight miles, to an average depth of twenty-two feet, with prisms of water varying from 110 feet in width at the bottom to 200 feet

in width at the bottom, and the width at the water line varying from 160 feet to 290 feet. That this vast body of water moved from the Chicago River and Lake Michigan into this channel between the 2d day of January and the 16th day of January, 1900; and that all that remained to do, in order to complete the great work for which the aforesaid great expenditures have been made was the raising of the gates and the lowering of the bear-trap dam at the bottom of said prism, twenty-eight miles away from the source of supply, and that this was duly and lawfully accomplished at 11.16 o'clock a. m., on the 17th day of January, 1900, prior to the time when Complainant presented its motion to this Court for leave to file its Bill of Complaint herein, and five days prior to the time said Bill was filed by leave of this Court.

Wherefore, and by reason of the premises aforesaid, this Defendant alleges that the said State of Missouri, Complainant herein, had notice of the premises, and of the great work and the great expenditures, which this Defendant alleges were the expenditures of public money raised by taxation, and by the sale of bonds, which are liens upon the tax funds of said District to be hereafter levied; and having such notice as aforesaid, and having so waited as aforesaid, it has been guilty of laches, and has slept upon its rights, if any it ever had, and is estopped to further urge its cause.

And this Defendant, further answering, says, that the drainage channel hereinbefore mentioned was commenced September 3, 1892, that it is constructed through glacial drift, earth and rock, through glacial drift for a distance of 13.1 miles, and through solid rock for a distance of 14.95 miles. That the width of said channel where the same is constructed through glacial drift for 7.8 miles is 110 feet at the bottom and 193 feet at the water line,

and has a capacity of 360,000 cubic feet of water per minute, with a velocity of one and one-quarter miles per hour. That for a distance of 5.3 miles said channel has a width at the bottom of 202 feet, and of 290 feet at the water line, and a capacity of 600,000 cubic feet per minute, with a velocity of one and one-quarter miles per hour. That where said channel is cut through solid rock, it has an average width from top to bottom of 161 feet, with a capacity of 600,000 cubic feet per minute, and a velocity of 1.9 miles per hour. That the carrying capacity of the total channel at the rate of three miles per hour exceeds 360,000 cubic feet per minute, and that this capacity of channel will be sufficient to and will furnish pure water from Lake Michigan at the ratio of twenty cubic feet to one cubic foot of the liquid sewage of every description furnished or to be furnished from the Chicago River and the Sanitary District aforesaid. That by the terms of the organic act creating the said Sanitary District of Chicago, Defendant was fully empowered and enjoined to do and perform all the acts, and make and construct all the improvements, channels, and outlets that it has constructed, at a cost to the Sanitary District of Chicago of over thirty-three million dollars.

And this Defendant, as to so much of said Bill as alleges that it, "Without any legal authority so to do, has already in part effected its said threat and purpose, and threatens to permit and to cause said sewage and filth, by artificial means of pumping and otherwise, to flow through the said channel or drain towards and into the said Des Plaines River, and eventually into the Mississippi River," answering, says: That all of its acts and doings hereinbefore and in said Bill set forth, have been done in pursuance of the powers given in and the duties devolved upon it by the said act of May 29, 1889. That

after having prosecuted its said work from the beginning continuously as aforesaid until the 27th day of May, 1897, a certain joint resolution was adopted by the Legislature of the State of Illinois which, among other things, recited as follows:

"Whereas, the General Assembly in 1889 passed an act to create sanitary districts, and provided thereunder for the disposal of the sewage of the City of Chicago, through the Des Plaines and Illinois Rivers, by means of a canal across the Chicago divide, of such capacity as to dilute the sewage beyond offence, and such sewage disposal was granted on the condition that said channel should be so constructed as to form part of a navigable waterway between Lake Michigan and the Mississippi River. * * *

"And whereas, under the legislation aforesaid and acts supplemental thereto, the works of the Sanitary District of Chicago are so far advanced that the water will be turned through the same in the year 1899.

"Therefore, be it resolved, First; That it is the policy of the State of Illinois to procure the construction of a waterway of the greatest practicable depth and usefulness for navigation from Lake Michigan, by way of the Des Plaines and Illinois Rivers to the lower Mississippi River, &c., &c." Which said joint resolution is to be found in the Session Laws of the State of Illinois for the year 1897, on page 309. By which said joint resolution the extent and progress of the said work of this Defendant was recognized and publicly declared. A copy of said joint resolution is attached to this answer as a part thereof, and marked, "Exhibit C."

That in the original act under which this Defendant was incorporated, and by Section 27 thereof, it was provided: "If any channel shall be constructed under the

provisions of Section 23, of this Act, it shall be the duty of the trustees of such district, when such channel shall be completed, and before any water or sewage shall be admitted therein, to duly notify in writing, the Governor of this State of such fact, and that the Governor shall thereupon appoint three discreet persons as commissioners, one of whom shall be a resident of the City of Joliet, or between said city and the City of La Salle, and one a resident of the City of La Salle, or between said city and the City of Peoria, and one a resident of the City of Peoria, or between said city and the mouth of the Illinois River, to inspect said work. The said commissioners shall, within ten days after such appointment, meet at the City of Chicago, and shall appoint a competent civil engineer, and they may employ such other assistants as they may require to expeditiously perform their duties. * * * And in case they shall find the work in all respects in accordance with the provisions of Section 23, of this Act, they shall so certify to the Governor, who shall thereupon authorize the water and sewage to be let into said canal."

That in pursuance of said Section the Governor of the State of Illinois, the Honorable John R. Tanner, upon notice in writing of the substantial completion of said work by said trustees, did appoint such a commission as is provided for in said Section 27. That in all respects as to personnel and locality said section was complied with by the appointment of E. S. Taylor, John Lambert and Alfred Schoch. That after such appointment the said commission went upon and examined the said channel and the said work, and thereupon, and on the 16th day of January, 1900, reported to the Governor as follows:

"Governor JOHN R. TANNER:

Your special committee reports the work of the Sanitary Trustees on the drainage channel substantially completed, and meets the requirements of the law, with the exception of the removal of the State Dams, which are in the hands of the Supreme Court. We recommend the granting of the official permit. Full official report will follow telegram. William Boldenweck, President, Board of Trustees is at St. Nicholas Hotel, Joliet.

(Signed) E. S. TAYLOR,
JOHN LAMBERT,
ALFRED SCHOCH."

That thereupon and on the 17th day of January, 1900, the said Governor authorized the opening of the said channel by the following message:

SPRINGFIELD, ILLINOIS, *January* 17, 1900.
VIA JOLIET, ILLINOIS, *January* 17, 1900.

To WILLIAM BOLDENWECK,
Lockport, Illinois.

To the BOARD OF SANITARY TRUSTEES, CHICAGO DRAINAGE DISTRICT, CHICAGO, ILLINOIS.

GENTLEMEN: The Board of Commissioners heretofore appointed by the undersigned to make an examination and survey of the Chicago River and the Chicago Drainage Channel, to determine whether the said channel has been completed in accordance with the requirements of Sec. 23, of the act entitled, "An Act to Create Sanitary Districts, and to Remove Obstructions in the Des Plaines and Illinois Rivers," approved May 29, 1889, in force July 1, 1889, having certified to me that said channel has been and is now completed in accordance with the law creating said Sanitary District. Now, therefore, I, John R. Tanner, Governor of the State of Illinois, do hereby authorize and direct you, the said Board of Sanitary Trustees, to open and let into the said channel the waters of Lake Michigan and of the Chicago River, and the sewage of the said Sanitary District, and to use and employ said channel for all

the uses and purposes for which said channel was constructed.

In witness whereof I have hereunto set my hand and seal, this 17th day of January, A. D. 1900.

JOHN R. TANNER,
Governor.

That thereupon the said Trustees, having received the said message and permit and authorization, did open the controlling works, and did permit the flow of the water of Lake Michigan and the sewage of the Sanitary District of Chicago as aforesaid into the Des Plaines River.

Wherefore, this Defendant says that in all respects it hath proceeded with full legal authority so to do.

And this Defendant, further answering, says that the distance by way of the drainage channel and the Illinois River, from Robey Street, Chicago, in the said Sanitary District, to the mouth of said Illinois River, is 322 miles. That the said Illinois River, into which the said Des Plaines River empties, is formed by the junction of the Des Plaines and the Kankakee Rivers, that the Fox River empties into the Illinois River at Ottawa, and that these three rivers uniting to form the Illinois River with their tributaries, are the natural drainage system for an area of country thickly populated and occupied by not less than a million and a half of people outside of said Sanitary District, and embracing an area of twenty-five thousand square miles. That upon the banks of said rivers, among very many smaller cities, all of them draining into the said rivers, and from thence into the Mississippi River, are the principal cities of Joliet, with a population of over 40,000, and having immense manufacturing establishments of the same nature and character as those in this Defendant's district, being the establishments of a varied industry carried on by a working population; and

the City of Aurora, with a population of 40,000, and a drainage and sewage system in all respects like that of Joliet. That these cities are respectively forty miles nearer to St. Louis by running water than is the drainage district of your Defendant. That lower down upon said Illinois River is the City of Peoria, with a population of 60,000, wherein is conducted the greatest distilling industry in the United States, together with stock-yards and cattle pens, as well as other large industries, all of which have their discharge into the said Illinois River. That the distance from the said Peoria to the mouth of the said Illinois River is about 160 miles. That in addition to the foregoing, may be mentioned the cities of Springfield, with a population of 25,000; Jacksonville, Carrolton, Beardstown, Pekin, Havana, Rushville, Mt. Sterling, Pittsfield, Lewiston and La Salle, all of which empty their sewage into the said Illinois River, by direction or indirection; and that the various sewage of this great population and these great cities is received into the said Illinois River before its junction with the Mississippi River, and that in addition thereto, as hereinbefore stated, the sewage of the Sanitary District from the same extent of territory, as is now discharging its sewage through the Sanitary District Channel, has been for the last thirty years received into said Des Plaines River, and from thence into the Illinois River.

And this Defendant, further answering, says, that in addition to the sewage and drainage carried into the Illinois River, and from thence into the Mississippi River, is the sewage and drainage of the vast territory tributary to the Mississippi River and its tributary streams. That this territory so drained is substantially all of the land of the United States between its northern border and the central line running east and west of the State of Kansas, pro-

longed eastward through the State of Missouri, and from the Rocky Mountains on the west to a line running from northeast to southwest, through the State of Illinois from the City of Chicago to the City of St. Louis, and in addition thereto, the western half of the State of Wisconsin, and the western two-thirds of the State of Minnesota. That the population of this region so drained into the Mississippi River, is in the neighborhood of fifteen million people. That an uncounted number of cities and towns, with populations ranging from two thousand to two hundred and fifty thousand, are situated upon the banks of the said Mississippi River and its tributaries, and discharge their sewage therein. That chief among these cities and towns may be mentioned Minneapolis and St. Paul in the State of Minnesota; Des Moines, Sioux City, Dubuque, Burlington, Davenport, and Keokuk, in the State of Iowa; Rock Island and Quincy in the State of Illinois; Kansas City in the State of Missouri, whose population is about 200,000, and St. Joseph, Boonville, St. Charles, and Jefferson City in said State, all of which are populous, and which discharge their sewage into the Missouri River; and Omaha and Nebraska City in the State of Nebraska That the distance from St. Paul and Minneapolis to the mouth of the Illinois River is 700 miles. That the distance from Omaha to the mouth of the Illinois River is 682.8 miles. That the distance from Kansas City to the mouth of the Illinois River is 413.7 miles. That the distance from Nebraska City to the mouth of the Illinois River is 630.7 miles. That in all these towns are carried on the industries such as are practiced by the citizens of this country, and similar in variety and character to those carried on within the district of this Defendant. That especially at Kansas City and Nebraska City and at Omaha, there are vast cattle yards, slaughter houses, rendering

establishments and other industries, such as are particularly mentioned in the Bill filed herein as being carried on within the limits of the drainage district.

And this Defendant says, that the said Mississippi River and the said Missouri River and their tributaries above the cities and towns in the State of Complainant, mentioned in said Bill, constitute the natural, uncontrollable drainage system of this whole region, this whole vast population and this whole system of industries, and that said cities and towns use the said system for their sewage from their location downward. That the additional amount of sewage which is being discharged through the drainage channel of this Defendant, if it shall not be interfered with by the order of this Honorable Court, is but trifling in amount as compared with the enormous volume of sewage received into said Mississippi River above the cities and towns in the State of Complainant, mentioned in said Bill.

And yet so it is, may it please your Honors, that by the natural law relating to sewage and drainage, and to running water in large bodies, the said sewage, instead of contributing a harmful element, is deprived of all of its deleterious qualities by processes of vaporization, attrition, lodgment, absorption, chemical conversion and bacteriologic changes, so that in the end the water purifies itself. That in addition to the foregoing, this Defendant, in pursuance of the act incorporating it, is removing from its sewage all of the solid material, and is diluting all of the liquid material by an addition thereto of twenty cubic feet of water, drawn from Lake Michigan, to every cubic foot of sewage. Wherefore, this Defendant says, that it will not, in and by the operation of its said system, contaminate, pollute, or destroy the water supply from the said Mississippi River and its tributaries, to the inhabitants, cities and towns in the State of Complainant, as in and by

said Bill declared. This Defendant attaches hereto and makes a part of this answer a certain table, which it marks "Exhibit D," of its answer, showing therein the extent and population of some of the cities and towns of the said territory now being drained and sewaged into the said Mississippi River and its tributaries, above the City of St. Louis and their respective distances from St. Louis.

This Defendant also attaches hereto A Concise Report on the Organization, Resources and Constructive Work of the Sanitary District of Chicago, which is marked Exhibit E.

And, further answering, this Defendant denies each and every other allegation of said Bill of Complaint, not herein and hereby admitted, traversed, confessed or denied; and this Defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said Bill charged, without this, that there is any matter, cause or thing in Complainant's Bill of Complaint contained, material or necessary for this Defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this Defendant, this Defendant is ready and willing to aver and maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with its reasonable costs in that behalf most wrongfully sustained.

BERNARD A. ECKHART,
Trustee of the Sanitary District of Chicago.

THE SANITARY DISTRICT OF CHICAGO,
By CHARLES C. GILBERT,
SAMUEL M. BURDETT,
Attorneys for the Sanitary District of Chicago.

WILLIAM M. SPRINGER,
Of Counsel.

UNITED STATES OF AMERICA, }
In the
Supreme Court of the United States. }

On this 13th day of March, 1900, before me, S. W. Burnham, Clerk of the Circuit Court of the United States for the Northern District of Illinois, personally appeared B. A. Eckhart, one of the Trustees of the Sanitary District of Chicago, one of the Defendants in the foregoing Bill of Complaint of the State of Missouri, against the State of Illinois and the Sanitary District of Chicago, who, being by me duly sworn, deposes and says, that he is a duly elected and qualified Trustee of the Sanitary District of Chicago, and that he is familiar with its affairs and business; that he has read the foregoing separate answer of this Defendant, the Sanitary District of Chicago, and knows the contents thereof, and that the same are true of his own knowledge, except as to the matters herein stated on information and belief, and as to those matters he verily believes them to be true.

S. W. BURNHAM,
Clerk, U. S. Circuit Court,
Northern District of Illino s.

EXHIBITS.

EXHIBIT A.

An Act to provide for the completion of the Illinois and Michigan Canal, upon the plan adopted by the State in 1836.

Whereas, it has been represented, that the City of Chicago, in order to purify or cleanse Chicago river, by drawing a sufficient quantity of water from Lake Michigan, directly through it, and through the summit division of the Illinois and Michigan Canal, would advance a sufficient amount of funds to accomplish this desirable object; and, whereas, the original plan of the said canal was to cut down the summit so as to draw a supply of water for navigation directly from Lake Michigan, which plan was abandoned, for the time being, after a large part of the work had been executed, only in consequence of the inability of the State to procure funds for its further prosecution; and, whereas, under the law creating the trust the plan of the summit division of the canal was changed, the level being raised so as to require the principal supply of water to be obtained through the Calumet feeder, subject to serious contingencies, and by pumping on to the summit with the hydraulic works at Bridgeport; now, therefore,

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That to secure the completion of the summit division of the Illinois and Michigan canal, upon the original "deep cut" plan, with such modifications and changes of line, if necessary, as will most effectually secure the thorough cleansing or purification of the Chicago river, and facilitate the execution of the work, the city of Chicago, through its constituted authorities, may at once enter into an arrangement with the board of trustees of said canal, with a view to the speedy accomplishment of the work.

SECTION 2. The canal shall not be constructed of a less capacity than the plan adopted by the canal commissioners in 1836, nor shall the work of deepening it be prosecuted so as to materially interfere with the navigation. By consent of the board of trustees, however, the navigation may be opened later and closed earlier than usual in former years, but it shall never be diminished to a less time than six months.

SECTION 3. It shall be lawful for the city of Chicago to enter upon and use any lands which may be necessary for the right of way for said canal, if the route should in any part vary from the present line of canal, and to take and use any materials, of any description, necessary for the prosecution of the work contemplated, along the line thereof; the value of the same to be determined in the mode provided by the general laws of this State.

SECTION 4. The amount expended by the city of Chicago in deepening the summit division of the canal, according to the plan adopted by the canal commissioners, in 1836, shall be a vested lien upon the Illinois and

Michigan canal and its revenues, after the payment of the present canal debt; and the net revenues of the canal shall all, thereafter, be applied to the payment of the principal and interest of the same expended in accomplishing the object of this act, until the whole amount is reimbursed to the city: *Provided*, the cost shall not exceed two and a half millions of dollars.

SECTION 5. The State of Illinois may at any time relieve this lien upon the canal and revenues, by refunding to the city of Chicago, the amount expended in making the contemplated improvement and the interest thereon.

APPROVED February 16, 1865.

Public Laws of Illinois, 1865, pp. 83-84.

EXHIBIT B.

SANITARY DISTRICTS.

AN ACT to Create Sanitary Districts and to Remove Obstructions in the Desplaines and Illinois Rivers. Approved May 29, 1889. In force July 1, 1889, and amended by an Act in force July 1, 1893. Approved May 13, 1897. In force July 1, 1897.

SECTION 1. (Incorporating Sanitary District—Question, How Submitted—Commissioners.) *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That whenever any area of contiguous territory within the limits of a single county shall contain two or more incorporated cities, towns or villages, and shall be situated that the maintenance of a common outlet for the drainage thereof will conduce to the preservation of the public health, the same may be incorporated as a sanitary district under this act, in the manner following: Any 5,000 legal voters resident within the limits of such proposed sanitary district may petition the county judge of the county in which they reside to cause the question to be submitted to the legal voters of such proposed district whether they will organize as a sanitary district under this act. Such petition shall be addressed to the county judge, and shall contain a definite description of the territory intended to be embraced in such district, and the name of such proposed sanitary district; *provided, however*, that no territory shall be included in any municipal corporation formed hereunder which is not situated within the limits of a city, incorporated town or village, or within three miles thereof, and no territory shall be included within more than one sanitary district under this act. Upon the filing of such petition in the office of the county clerk of the county in which such territory is situated it shall be the duty of the county judge to call to his assistance two judges of the circuit court and such judges shall constitute a board of commissioners which shall have power and authority to consider the boundaries of any such proposed sanitary district, whether the same shall be described in such petition or otherwise. Notice shall be given by such county judge of the time and place where such commissioners will meet, by a publication inserted in one or more daily papers published in such county, at least twenty days prior to such meeting. At such meeting the county judge shall preside, and all persons in such proposed sanitary district shall have an opportunity to be heard touching the location and boundary of such proposed district and make suggestions

regarding the same, and such commissioners, after hearing statements, evidence, and suggestions, shall fix and determine the limits and boundaries of such proposed district, and for that purpose and to that extent may offer and amend such petition. After such determination by said commissioners, or a majority of them, the county judge shall submit to the legal voters of the proposed sanitary district the question of the organization and establishment of the proposed sanitary district, as determined by said commissioners, at an election to be held on the first Tuesday after the first Monday in November thence next ensuing. Notice whereof shall be given by said commissioners, at least twenty days prior thereto, by publication in one or more daily papers published within such proposed sanitary district, such notice to specify briefly the purpose of such election, with a description of such proposed district. Each legal voter resident within such proposed sanitary district shall have the right to cast a ballot at such election, with the words thereon, "for sanitary district," or, "against sanitary district." The ballots so cast shall be received, returned, and canvassed in the same manner and by the same officers as is provided by law in the case of ballots cast for county officers. The county judge shall cause a statement of the result of such election to be spread upon the records of the county court. If a majority of the votes cast upon the question of the incorporation of the proposed sanitary district shall be in favor of the proposed sanitary district, such proposed district shall thenceforth be deemed an organized sanitary district under this act.

SECTION 2. (Judicial Notice of District Organization—Election—County Judge.) All courts in this State shall take judicial notice of the existence of all sanitary districts organized under this act. Upon the organization of any sanitary district under this act, the county judge shall call an election to elect officers and cause notice thereof to be posted or published, and perform all other acts in reference to such election in like manner as nearly as may be, as he is required to perform in reference to the election of officers in newly organized cities under the provisions of an act entitled, "An act to provide for the incorporation of cities and villages," approved April 10, 1872.

SECTION 3. (Trustees, Election and Terms of.) In each sanitary district organized under this act, there shall be elected nine Trustees who shall hold their offices for five years, and until their successors are elected and qualified, except the term of office of the first trustees elected, shall be until five years after the first Monday in December after their election. The election of trustees, after the first, shall be on the Tuesday next after the first Monday in November in every fifth year. In all elections for trustees each qualified voter may vote for as many candidates as there are trustees to be elected, or he may distribute his vote among not less than five-ninths of the candidates to be elected, giving to each of the candidates among whom he distributes the same the same number of votes or fractional parts of votes. The trustees shall choose one of their number President, and such sanitary district shall from the time of the first election held by it under this act be construed in law and equity a body corporate and politic and by the name and style of the sanitary district of ——, and by such name and style may sue and be sued, contract and be contracted with, acquire and hold real estate and personal property necessary for corporate purposes, and adopt a common seal and alter the same at pleasure.

SECTION 4. (Trustees Constitute a Board—Duties and Powers of—

Duties and Compensation of Officers—Ordinances.) The trustees elected in pursuance of the foregoing provisions of this act shall constitute a board of trustees for the district by which they are elected, which board of trustees is hereby declared to be the corporate authorities of such sanitary district, and shall exercise all the powers and manage and control all the affairs and property of such district. Said board of trustees shall have the right to elect a clerk, treasurer, chief engineer and attorney for such municipality, who shall hold their respective offices during the pleasure of the board, and who shall give such bond as may be required by said board. Said board may prescribe the duties and fix the compensation of all the officers and employes of said sanitary district; *provided, however*, that the salary of the president of said board of trustees shall in no case exceed the sum of four thousand dollars per annum; and that the salary of the other members of the board shall not exceed three thousand dollars per annum; *and, provided further*, that the amount received by any attorney shall not exceed the sum of five thousand dollars ($5,000) per annum. Said board of trustees shall have full power to pass all necessary ordinances, rules and regulations for the proper management and conduct of the business of said board of trustees and of said corporation, and for carrying into effect the objects for which such sanitary district is formed.

Section 5. (Ordinances, Making Appropriation, Publication of.) All ordinances making any appropriations shall, within one month after they have passed, be published at least once in a newspaper published in such district, or if no such newspaper of general circulation is published therein, by posting copies of the same in three public places in the district; and no such ordinance shall take effect until ten days after it is so published, and all other ordinances, orders, and resolutions shall take effect from and after their passage unless otherwise provided therein.

Section 6. (Ordinance and Resolutions—Evidence.) All ordinances, orders, and resolutions, and the date of publication thereof, may be proven by the certificate of the clerk, under the seal of the corporation, and when printed in book or pamphlet form, and purporting to be published by the board of trustees, and such book or pamphlet shall be received as evidence of the passage and legal publication of such ordinances, orders, and resolutions, as of the dates mentioned in such book or pamphlet, in all courts and places without further proof.

Section 7. (Board of Trustees, Powers of.) The board of trustees of any sanitary district organized under this act shall have power to provide for the drainage of such district by laying out, establishing, constructing, and maintaining one or more main channels, drains, ditches, and outlets for carrying off and disposing of the drainage (including the sewage) of such district, together with such adjuncts and additions thereto as may be necessary or proper to cause such channels or outlets to accomplish the end for which they are designed in a satisfactory manner; also to make and establish dock adjacent to any navigable channel made under the provisions hereof for drainage purposes, and to lease, manage, and control such docks, and also to control and dispose of any water-power which may be incidentally created in the construction and use of said channels or outlets, but in no case shall said board have any power to control water after it passes beyond its channel, waterways, races, or structures into a river or natural waterway or channel, or water-power or docks situated on such river or natural waterway or channel; *provided,*

however, nothing in this act shall be construed to abridge or prevent the State from hereafter acquiring a portion of the funds derived from such water-power, dockage, or wharfage to be paid into the State treasury to be used for State purposes. Such channels or outlets may extend outside of the territory included within such sanitary district and the rights and powers of said board of trustees over the portion of such channel or outlet lying outside of such district shall be the same as those vested in said board over that portion of such channels or outlets within the said district.

SECTION 8. (May Purchase and Sell Real Estate, etc.) Such sanitary district may acquire by purchase, condemnation, or otherwise, any and all real and personal property, right of way and privilege, either within or without its corporate limits, that may be required for its corporate purposes; *provided*, all moneys for the purchase and condemnation of any property shall be paid before possession is taken, or any work done on the premises damaged by the construction of such channel or outlet, and in case of an appeal from the county court taken by either party, whereby the amount of damages is not finally determined, the amount of judgment in such court shall be deposited at some bank, to be designated by the judge thereof, subject to the payment of such damages on orders signed by such county judge, whenever the amount of damages is finally determined; and when not longer required for such purposes to sell, convey, vacate and release the same, subject to the reservation contained in Section 7, relating to water-powers and docks.

SECTION 9. (May Borrow Money—Limitation.) The corporation may borrow money for corporate purposes, and may issue bonds therefor, but shall not become indebted in any manner, or for any purpose, to an amount in the aggregate to exceed five per centum of the valuation of taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness; *provided, however*, that said five per centum shall not exceed the sum of fifteen million ($15,000,000) dollars.

SECTION 10. (To Provide for Direct Annual Tax—Net Earnings.) At the time or before incurring any indebtedness, the board of trustees shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof as the same shall fall due, and at least within twenty years from the time of contracting the same; *provided*, that the net earnings from water-power and docks may be appropriated and applied to the purpose of paying the interest or principal of such indebtedness, or both, and to the extent that they will suffice the direct tax may be remitted.

SECTION 11. (Contracts—How Let—Eight Hours a Day's Work.) All contracts for work to be done by such municipality, the expense of which will exceed five hundred dollars, shall be let to the lowest responsible bidder therefor, upon not less than sixty days' public notice of the terms and conditions upon which the contract is to be let having been given by publication in a newspaper of general circulation published in said district, and the said board shall have the power and authority to reject any and all bids, and re-advertise; *provided*, no person shall be employed on said work unless he be a citizen of the United States, or has in good faith declared his intentions to become such citizen. In all cases where an alien, after filing his declaration of intention to become a citizen of the United States, shall, for the space of three months after he could

lawfully do so, fail to take out his final papers and complete his citizenship, such failure shall be *prima facie* evidence that his declaration of intentions was not made in good faith. And that eight hours shall constitute a day's work. The courts cannot control and determine a question vested by statute in a municipal body. The courts, in the absence of fraud, cannot by mandamus or mandatory injunction restrain a municipal board from entering into such a contract for public work as it may award to the bidder.

SECTION 12. (Trustees May Levy and Collect Taxes—Movable Bridges.) The board of trustees may levy and collect taxes for corporate purposes upon property within the territorial limits of such sanitary district, the aggregate amount of which for each of the years 1895, 1896, 1897, 1898, and 1899, shall not exceed one and one-half per centum of the value of the taxable property within the corporate limits, as the same shall be assessed and equalized for the state and county taxes of the year in which the levy is made, and the aggregate amount of which in any one year after the year 1899 shall not exceed one-half of one per centum of such value. Said board shall cause the amount required to be raised by taxation in each year to be certified to the county clerk on or before the second Tuesday in August, as provided in section one hundred and twenty-two of the general revenue law. All taxes so levied and certified shall be collected and enforced in the same manner and by the same officers as state and county taxes, and shall be paid over by the officer collecting the same to the treasurer of the sanitary district in the manner and at the time provided by the general revenue law; *provided*, that no part of the taxes hereby authorized shall be used by such drainage district for the construction of permanent, fixed, immovable bridges across any channel constructed under the provisions of this act; and, *provided further*, that all bridges built across such channel shall not necessarily interfere with or obstruct the navigation of such channel, when the same becomes a navigable stream, as provided in Section 24 of this act, but such bridges shall be so constructed that they can be raised, swung, or moved out of the way of vessels, tugs, boats, or other water crafts navigating such channel; and, *provided further*, that nothing in this act shall be so construed as to compel said district to maintain or operate said bridges, as movable bridges, for a period of seven years from and after the time when the water has been turned into said channel pursuant to law, unless the needs of general navigation on the Desplaines and the Illinois rivers, when connected with said channel, sooner require it.

SECTION 13. (Expenses of Improvement—Special Assessments—General Tax.) The board of trustees shall have power to defray the expense of any improvement made by it in the execution of the powers hereby granted to such incorporation, by special assessment or by general taxation, or partly by special assessment and partly by general taxation, as they shall by ordinance prescribe. It shall constitute no objection to any special assessment, that the improvement for which the same is levied is partly outside the limits of such incorporation, but no special assessment shall be made upon property situated outside of such sanitary district, and in no case shall any property be assessed more than it will be benefited by the improvement for which the assessment is levied. The proceedings for making, levying, collecting and enforcing of any special assessment, levied hereunder, shall be the same as nearly as may be as is prescribed by article nine of an act entitled "An act to provide for the incorpora-

tion of cities and villages," approved April 10, 1873. Whenever in said act the words "city council" are used, the same shall apply to the board of trustees constituted by this act, and the words applying to the city or its officers in that article shall be held to apply to the corporation hereby created and to its officers.

SECTION 14. (Assessment Installments—Interest.) When any assessment is made under this act, the ordinance authorizing such assessment may provide that it be divided into equal annual installments, not more than twenty in number, and fix the amount and time of payment of each installment, and that the installment shall bear interest at a rate not exceeding six per cent. per annum, payable annually, from the date fixed in said ordinance, and the several installments and interest thereon may be collected and enforced, as they shall become due, in the manner provided for the enforcement of assessments under said article nine. No more of any assessment need be returned or certified to the county collector than will show the amount due and unpaid at the time of such return, and no sale of any parcel of land for any installment of an assessment shall discharge the premises from any subsequent installment of the same or any other assessment. Any one or all of the installments may be paid any time after the assessment is confirmed, with accrued interest, if any, to the date of payment.

SECTION 15. (When Assessments Payable by Installments—Bonds May be Issued.) Where any assessment is made payable in installments the board of trustees may issue bonds or certificates not exceeding in amount eighty per centum of the unpaid portion of such assessment at the date of the issue thereof, payable only out of such assessment, and bearing interest at a rate not exceeding the rate of interest upon the installments of such assessments. The board of trustees shall have the right to call in and pay off said bonds or certificates as fast as there is money received into the treasury from the assessment against which the same are issued, and all moneys received upon such assessment shall be applied to the payment of said certificates or bonds until they are fully satisfied.

SECTION 16. (Private Property—How Taken for Improvement.) Whenever the board of trustees of any sanitary district shall pass an ordinance for the making of any improvement which such district is authorized to make, the making of which will require that private property should be taken or damaged, such district may cause compensation therefor to be ascertained, and condemned and acquire possession thereof in the same manner as nearly as may be as is provided in an act entitled, "An act to provide for the exercise of the right of eminent domain," approved April 10, 1872; *provided, however*, that proceedings to ascertain the compensation to be paid for taking or damaging private property shall in all cases be instituted in the county where the property sought to be taken or damaged is situated; *and, provided*, that all damages to property, whether determined by agreement or by final judgment of court, shall be paid out of the annual district tax, prior to the payment of any other debt or obligation. The present value of land condemned is the proper measure of damages for its condemnation, but possible increase on account of proposed improvement cannot be considered.

SECTION 17. (May Acquire Right of Way.) When it shall be necessary in making any improvements, which any district is authorized by this act to make, to enter upon any public property, or property held for public use, such district shall have the power so to do and may acquire the necessary right of way over such property held for public use in the

same manner as is above provided for acquiring private property, and may enter upon, use, widen, deepen, and improve any navigable or other waters, water-ways, canal, or lake; *provided*, the public use thereof shall not be unnecessarily interrupted or interfered with, and that the same shall be restored to its former usefulness as soon as practicable; *provided, however*, that no such district shall occupy any portion of the Illinois and Michigan Canal outside of the limits of the county in which such district is situated for the site of any such improvement, except to cross the same, and then only in such a way as not to impair the usefulness of said canal, or to the injury of the right of the state therein, and only under the direction and supervision of the canal commissioners; *and, provided further*, that no district shall be required to make any compensation for the use of so much of said canal as lies within the limits of the county in which said district is situated, except for transportation purposes.

SECTION 18. (Special Assessment—Damage to Property, and Cost of Acquiring.) In making any special assessment for any improvement which requires the taking or damaging of property, the cost of acquiring the right to damage or take such property may be estimated and included in the assessment as a part of the cost of making such improvement.

SECTION 19. (Liability of Sanitary District for Damages.) Every sanitary district shall be liable for all damages to real estate within or without such district which shall be overflowed or otherwise damaged by reason of the construction, enlargement, or use of any channel, ditch, drain, outlet, or other improvement under the provisions of this act; and actions to recover such damages may be brought in the county where such real estate is situate, or in the county where such sanitary district is located, at the option of the party claiming to be injured. And in case judgment is rendered against such district for damages the plaintiff shall also recover his reasonable attorney's fees, to be taxed as costs of suit; *provided, however*, that it shall appear on the trial that the plaintiff notified the trustees of such district, stating that he claims damages to the amount of . . . . . dollars, by reason of (here insert the cause of damage) and intends to sue for the same; *and provided further*, that the amount recovered shall be larger than the amount offered by said trustees (if anything) as a compromise for damages sustained.

SECTION 20. (Capacity of Channel or Outlet). Any channel or outlet constructed under the provisions of this act, which shall cause the discharge of sewage into or through any river or stream of water beyond or without the limits of the district constructing the same, shall be of sufficient size and capacity to produce a continuous flow of water of at least two hundred cubic feet per minute for each one thousand of the population of the district drained thereby, and the same shall be kept and maintained of such size and in such condition that the water thereof shall be neither offensive nor injurious to the health of any of the people of this state, and before any sewage shall be discharged into such channel or outlet all garbage, dead animals, and parts thereof, and other solids, shall be taken therefrom, and any such channel or channels, turn into such channel or channels not less than 20,000 cubic feet of water per minute for every 100,000 inhabitants of said district, and shall thereafter maintain the flow of such quantity of water.

SECTION 21. (Sanitary District—Failure to Comply with Act—Remedy—Penalty.) In case any sanitary district in this State formed under the provisions of this act, shall introduce sewage into any river or stream of water, or natural or artificial water course, beyond or without the limits

of such district, without conforming to the provisions of this act, or having introduced such sewage into such water course, shall fail to comply with any of the provisions of this act, an action to enforce compliance shall be brought by the attorney general of this state in the courts of any county wherein such water course is situated, or he may authorize the state's attorney of any such county to commence and prosecute such action in any such county; *provided*, that nothing in this section contained shall be construed to prevent the prosecution of any action or proceeding by individuals or bodies corporate or politic against such district; *and provided further*, that if any individual or the authorities of any municipal corporation shall file with the attorney general a verified statement, in writing, setting forth wherein said sanitary district has failed to comply with any of the provisions of this act, it shall be the duty of the attorney general forthwith to file in the supreme court of this state a petition for mandamus, setting forth wherein said sanitary district has failed to comply with the provisions of this act, and said court shall thereupon hear and determine said cause and proceed to enforce compliance with the provisions of this act, as in other cases of mandamus.

And in order to comply with the provisions of this act, such sanitary district is hereby authorized and empowered to levy and collect such tax, as an emergency tax, upon the taxable property of such sanitary district as may be necessary to carry into effect any order, judgment or decree of said court relating to the requisite flowage of water, capacity of the channel or outlet and the construction, maintenance and operation of movable bridges, as required by this act.

SECTION 22. (Act—How Construed.) Nothing in this act contained shall be so construed as to constitute a contract or grant between the State of Illinois and any sanitary district formed under its provisions, or to prevent, debar or deprive the State of Illinois from, at any time in the future, altering, amending or repealing this act, or imposing any conditions, restrictions or requirements other, different or additional to any herein contained upon any sanitary district which may be formed hereunder.

SECTION 23. (Channel—How to be Constructed.) If any channel is constructed under the provisions hereof by means of which any of the waters of Lake Michigan shall be caused to pass into the Desplaines and Illinois Rivers, such channel shall be constructed of sufficient size and capacity to produce and maintain at all times a continuous flow of not less than 300,000 cubic feet of water per minute, and to be of a depth not less than fourteen feet, and a current not exceeding three miles per hour, and if any portion of any such channel shall be cut through a territory with a rocky stratum where such rocky stratum is above a grade sufficient to produce a depth of water from Lake Michigan of not less than eighteen feet, such portion of said channel shall have double the flowing capacity above provided for, and a width of not less than one hundred and sixty feet at the bottom capable of producing a depth of not less than eighteen feet of water. If the population of the district draining into such channel shall at any time exceed 1,500,000 such channel shall be made and kept of such size and in such condition that it will produce and maintain at all times a continuous flow of not less 20,000 cubic feet of water per minute for each 100,000 of the population of such district, at a current of not more than three miles per hour, and if at any time the general government shall improve the Desplaines or Illinois Rivers, so that the same shall be capable of receiving a flow of 600,000 cubic feet of water per

minute, or more, from said channel, and shall provide for the payment of all damages which any extra flow above 300,000 cubic feet of water per minute from said channel may cause to private property therefrom, then such sanitary district shall, within one year thereafter, enlarge the entire channel leading into said Desplaines or Illinois Rivers from said district to a sufficient size and capacity to produce and maintain a continuous flow throughout the same of not less than 600,000 cubic feet of water per minute, with a current of not more than three miles per hour, and such a channel shall be constructed upon such grade as to be capable of producing a depth of water of not less than eighteen feet throughout said channel, and shall have a width of not less than one hundred and sixty feet at the bottom; in case a channel is constructed in the Desplaines River, as contemplated in this section, it shall be carried down the slope between Lockport and Joliet to the pool, commonly known as the upper basin, of sufficient width and depth to carry off the water the channel shall bring down from above. The district constructing a channel to carry water from Lake Michigan of any amount authorized by this act, may correct, modify and remove obstructions in the Desplaines and Illinois Rivers wherever it shall be necessary so to do to prevent overflow or damage along said river, and shall remove the dams at Henry and Copperas Creek in the Illinois River, before any water shall be turned into the said channel. And the canal commissioners if they shall find at any time that an additional supply of water has been added to either of said rivers, by any drainage district or districts, to maintain a depth of not less than six feet from any dam owned by the state, to and into the first lock of the Illinois and Michigan Canal at La Salle, without the aid of any such dam, at low water, then it shall be the duty of said canal commissioners to cause such dam or dams to be removed. *This act shall not be construed to authorize the injury or destruction of existing water-power rights.*

SECTION 24. (Channel—When Completed—Control of.) When such channel shall be completed, and the water turned therein, to the amount of three hundred thousand cubic feet of water per minute, the same is hereby declared a navigable stream, and whenever the general government shall improve the Desplaines and Illinois Rivers for navigation, to connect with this channel, said general government shall have full control over the same for navigation purposes, but not to interfere with its control for sanitary or drainage purposes.

SECTION 25. (May Permit Territories Outside to Drain, Etc.) Any district formed hereunder shall have the right to permit territory lying outside its limits and within the same county to drain into and use any channel or drain made by it, upon such payments, terms and conditions as may be mutually agreed upon, and any district formed hereunder is hereby given full power and authority to contract for the right to use any drain or channel which may be made by any other sanitary district, upon such terms as may be mutually agreed upon, and to raise the money called for by such contract in the same way and to the same extent as such district is authorized to raise money for any other corporate purposes; *provided*, that where the united flow of any sanitary districts thus co-operating shall pass into any channel constructed within the limits of the county wherein such districts are located, and which passes into the Desplaines or Illinois Rivers, such united flow shall in no case and at no time be less than 20,000 cubic feet of water per minute for each one hundred thousand of the aggregate of the population of

the districts co-operating: *provided*, nothing in this act shall in any wise be so construed as to diminish, impair or remove any right or rights of any city, village, township or corporation, body politic, or individual, situated on the Desplaines or Illinois Rivers, or their tributaries, and within the valleys of the same, to use the channel for drainage or otherwise, not inconsistent with the rights of the district constructing the same, as expressed in this act.

SECTION 26. (When City or Village owns Waterworks, etc.) Whenever in any such sanitary district there shall be a city, incorporated town or village which owns a system of waterworks and supplies water from a lake or other source which will be saved and preserved from sewage pollution, by the construction of the main channel, drain, ditch or outlet herein provided for, and the turning of the sewage of such city and district therein, and there shall be in such sanitary district any territory bordering on any such city, incorporated town or village within the limits of another city, incorporated town or village, which does not own any system of waterworks, at the time of the creation of such sanitary district, then upon application by the corporate authorities of such latter named city, incorporated town or village, the corporate authorities of such city, incorporated town or village having such system of waterworks shall furnish water at the boundary line between such municipalities by means of its waterworks to the corporate authorities asking for the same in such quantities as may be required to supply consumers within said territory, at no greater price or charge than it charges and collects of consumers, within its limits for water furnished through meters in like large quantities.

SECTION 27. (When Channel Constructed—Commissioners to be Appointed to Inspect Its Works.) If any channel shall be constructed under the provisions of Section 23 of this act, it shall be the duty of the trustees of such district, when such channel shall be completed, and before any water or sewage shall be admitted therein, to duly notify, in writing, the Governor of this state of such fact; and the Governor shall thereupon appoint three discreet persons as commissioners, one of whom shall be a resident of the City of Joliet, or between said city and the City of La Salle, and one a resident of the City of La Salle, or between said city and the City of Peoria, and one a resident of the City of Peoria, or between said city and the mouth of the Illinois River, to inspect said work. The said commissioners shall, within ten days after such appointment, meet at the City of Chicago, and shall appoint a competent civil engineer, and they may employ such other assistance as they may require to expeditiously perform their duties. The said commission shall take as their datum line for the survey the datum established by the Illinois and Michigan Canal Trustees in 1847, and shall make such examination and surveys of Chicago River and of the channel or channels authorized by this act as shall enable them to ascertain whether said channel is of the character and capacity required by this act. And in case they shall find the work in all respects in accordance with the provisions of Section 23 of this act, they shall so certify to the Governor, who shall thereupon authorize the water and sewage to be let into said channel. But in case said commissioners shall find said channel is not constructed in accordance with the provisions of this act, it shall be their duty to file in any court of competent jurisdiction, on the chancery side thereof, in their name as such commissioners, a bill against said corporation, which bill shall set forth wherein said work is deficient and fails to comply with the

provisions of this act; and said court shall thereupon issue an injunction without bond against said defendants enjoining and restraining it from admitting water or sewage into said channel until the final order of the court. And in case said court, upon hearing, shall determine that said channel is not constructed in accordance with the provisions of this act, said injunction shall be continued until the provisions of this act shall have been fully complied with.

Such commissioners and engineer shall receive for their services ten dollars per day each, and their reasonable expenses and outlays for the time by them necessarily employed in the discharge of their duties, which shall be paid to them by the State Treasury; and the said sanitary district shall reimburse the state for all expenses and disbursements on account of said commission.

If any channel is constructed under the provisions of this act which shall discharge the sewage of a population of more than 300,000 into or through any river beyond or without the limits of the district constructing it, the same shall be constructed in accordance with the provisions of Section 23 of this act, and if any such channel receives its supply of water from any river or channel connecting with Lake Michigan, it shall be construed as receiving its supply of waters from Lake Michigan.

"EXHIBIT C."

Construction of Waterways.

Whereas, the General Assembly in 1869 passed "An act to create sanitary districts" and provided thereunder for the disposal of the sewage of the city of Chicago through the Desplaines and Illinois rivers by means of a canal across the Chicago Divide of such capacity as to dilute the sewage beyond offense, and such sewage disposal was granted on the condition that said channel should be so constructed as to form part of a navigable waterway between Lake Michigan and the Mississippi river, and on the theory that to produce a waterway of magnitude, as demanded by modern conditions, required a large and constant volume of water flowing through the Illinois river; and further, it was provided that the State dams at Henry and Copperas creek should be removed before the said waters should be turned through the said canal, and the United States was requested by joint resolution to stop work on the locks and dams at La Grange and at Kampsville, and to enter upon the improvement of the channel from La Salle to the mouth of the said Illinois river, and to develop progressively all the depth practicable by the aid of a large water supply from Lake Michigan; and

Whereas, Under the legislation aforesaid and acts supplemental thereto, the works of the sanitary district of Chicago are so far advanced that the water will be turned through the same in the year 1899, and the General Government, regardless of the wishes of the people of this State and of those most immediately concerned, has completed the locks and dams at La Grange and at Kampsville; and it is the experience of those familiar with the Illinois river that the dams therein below La Salle have produced a deterioration of the channel and an increase of overflow, and that they should be removed for the sanitary and agricultural benefit of the Illinois Valley, and, furthermore, that said dams will be unnecessary for navigation and a further menace to the valley on the turning therein of the volume of water proposed from Lake Michigan at Chicago; and,

Whereas, The construction of the Sanitary Canal of Chicago, and the large volume of water required to flow through the same will bring lake and river navigation, which are now 320 miles apart, within sixty miles of each other, and the development of the intermediate section between Lockport and Utica will furnish a through route from the Great Lakes to the Lower Mississippi by way of the Lower Illinois river, and to the upper Mississippi by way of the Hennepin Canal; and further, that the proportion of three routes constructed by the Sanitary District of Chicago will exceed the cost of extending the largest useful navigation by way of the Illinois river to the Lower Mississippi, together with that of the Hennepin Canal to the Upper Mississippi; and

Whereas, We believe the making of a deep waterway of the Illinois river, to be an undertaking which is national in its character, and should be accomplished by the General Government, for the general welfare, the inland and maritime commerce of the nation, and for the nation's defense in time of war; therefore, be it

Resolved, by the Senate, the House of Representatives concurring therein:

1. That it is the policy of the State of Illinois to procure construction of a waterway of the greatest practicable depth and usefulness for navigation from Lake Michigan by way of the Desplaines and Illinois rivers to the Lower Mississippi river, and by way of the Hennepin Canal to the Upper Mississippi river, and to encourage the construction of useful feeders thereto.

2. That the locks and dams on the Illinois river at La Grange and at Kampsville are detrimental to the sanitary and agricultural welfare of Illinois Valley, and form no part of a proper development in the interests of navigation and should be removed whenever the supply of water as required by is turned into the said river by means of the Sanitary Canal of Chicago; and said district has removed the dams at Henry and Copperas creek; and the United States is hereby respectfully requested to remove the said dams and to enter upon the improvement of the alluvial portion of the Illinois river by means of a system of channel improvement so as to fully utilize the flow of water from Lake Michigan.

3. That the rockbound section of the Desplaines and Illinois rivers from the end of the Sanitary Canal of Chicago, to Lockport, to the head of the alluvial river at Utica, should be developed for a navigable depth of not less than fourteen feet, and that the United States is requested to enter upon this work in co-operation with all lawful agencies provided for in this State and in harmony with the policy herein set forth.

4. That we demand the immediate removal of all dams constructed by the Government across the Illinois river whether the channel of the river is deepened or not, and our Senators and Representatives in the United States Congress are hereby earnestly requested to use their influence in favor of the removal of such dams at the earliest practical moment.

Adopted by the Senate May 27, 1897.

Concurred in by the House of Representatives, 1897.

EXHIBIT D.

Table showing population (Census 1890) and miles distant from St. Louis of the various towns and cities discharging their sewage and drainage into the Mississippi River and tributaries above St. Louis, Missouri.

Name of city.	State.	Population 1890, unless otherwise stated.	Miles distant from St. Louis, Mo.
Aurora	Illinois	19,668	250
Alton	"	10,294	20
Aledo	"	1,601	225
Amboy	"	2,657	330
Batavia	"	3,641	300
Beardston	"	4,226	110
Belvidere	"	3,867	365
Bloomington	"	20,464	190
Bushnell	"	2,314	150
Chillicothe	"	1,632	195
Carlinville	"	3,296	90
Carrolton	"	2,256	75
Clinton	"	2,598	200
Dundee	"	2,023	315
Dixon	"	5,161	330
Decatur	"	16,841	210
De Kalb	"	2,579	375
Elgin	"	17,623	300
Earlville	"	1,056	270
East Dubuque	"	1,069	345
Elmwood	"	1,546	180
El Paso	"	1,353	225
Freeport	"	10,189	405
Fulton	"	2,099	300
Geneva	"	1,692	265
Galena	"	5,635	340
Grafton	"	936	35
Galesburg	"	15,264	235
Galva	"	2,409	280
Genesee	"	3,132	285
Hamilton	"	1,301	150
Havana	"	1,512	210
Henry	"	574	210
Hennepin	"	1,564	300
Hinsdale	"	1,564	300
Joliet	"	23,264	310

Name of city.	State.	Population 1890, unless otherwise stated.	Miles distant from St. Louis, Mo.
Jacksonville	Illinois	12,935	105
Jerseyville	"	3,207	35
Kankakee	"	9,025	400
Campsville	"	172	60
Keithsburg	"	1,464	210
Kewannee	"	4,569	270
Knoxville	"	1,725	165
Lockport	"	2,449	320
Lemont	"	6,000	385
Lasalle	"	9,855	262
Lacon	"	1,649	200
Lewiston	"	2,166	150
Lexington	"	1,167	225
Lincoln	"	6,726	180
Morris	"	3,693	270
Momence	"	1,635	330
Morrison	"	2,068	300
Moline	"	12,000	250
Macomb	"	4,022	160
Marengo	"	1,445	—
Maywood	"	2,076	330
Mendota	"	3,542	210
Minonk	"	2,316	215
Monmouth	"	5,936	235
Mount Stirling	"	1,655	105
Ottawa	"	9,965	240
Oak Park	"	4,771	336
Oregon	"	1,566	345
Oquawka	"	1,100	200
Port Byron	"	775	270
Pekin	"	6,347	160
Peoria	"	41,024	167
Peru	"	5,530	262
Petersburg	"	2,342	142
Pittsfield	"	2,295	105
Plano	"	1,824	270
Polo	"	1,728	330
Pontiac	"	2,784	270
Princeton	"	3,396	225
Quincy	"	31,494	135
Riverside	"	1,000	228
Rockford	"	23,584	360
Rock Island	"	13,634	290
Rochelle	"	1,769	350
Rushville	"	2,031	120
St. Charles	"	1,690	290
Springfield	"	24,963	143

Name of city.	State.	Population 1890, unless otherwise stated.	Miles distant from St. Louis, Mo.
Savannah	Illinois	3,097	325
Spring Valley	"	3,887	225
Stirling	"	5,824	315
Streeter	"	11,414	256
Sycamore	"	2,967	390
Taylorsville	"	2,821	211
Upper Alton	"	1,803	30
Wilmington	"	1,675	290
Warsaw	"	2,721	160
Wheaton	"	1,622	320
Woodstock	"	1,663	400
Ackley	Iowa	1,466*	400
Burlington	"	25,246*	207
Belmond	"	1,173	428
Bellevue	"	1,533	340
Boone	"	6,345	350
Clinton	"	17,375*	300
Cedar Rapids	"	21,655*	305
Cedar Falls	"	4,306*	376
Charles City	"	4,201*	401
Council Bluffs	"	20,169*	467
Cherokee	"	3,092*	600
Dubuque	"	40,564*	363
Davenport	"	30,010*	272
Des Moines	"	56,359*	311
Emmettsburg	"	2,104*	441
Esterville	"	2,494*	454
Eldora	"	2,096*	376
Eagle Grove	"	3,006*	389
Ft. Madison	"	10,022*	185
Ft. Dodge	"	6,756*	369
Fairfield	"	4,026*	259
Guttenberg	"	1,424*	369
Glenwood	"	2,143*	465
Hamburg	"	1,905*	435
Humboldt	"	1,240*	395
Hawarden	"	1,725*	617
Iowa City	"	7,526*	178
Independence	"	5,124*	402
Iowa Falls	"	2,234*	402
Jefferson	"	2,260*	276
Keokuk	"	15,729*	170
Lansing	"	1,566*	441
Lyons	"	6,602*	311
Lake City	"	2,053*	390
McGregor	"	1,201*	415

* Census 1895

Name of city.	State.	Population 1890, unless otherwise stated.	Miles distant from St. Louis, Mo.
Muscatine	Iowa	12,237*	245
Marshalltown	"	10,049*	365
Marengo	"	2,072*	311
Moingona	"	1,214	350
Manchester	"	2,663*	402
Mt. Pleasant	"	3,920*	220
Nashua	"	1,302*	402
Ottumwa	"	16,761*	236
Oscaleso	"	8,851*	268
Sioux City	"	27,371*	500
Vinton	"	3,160*	337
Waterloo	"	8,490*	363
Waverly	"	2,916	376
Wappello	"	1,290*	235
Washington	"	3,761*	248
Webster City	"	5,095*	369
Bonneville	Missouri	4,441	176
Brunswick	"	1,745	210
Bethany	"	1,105	210
Brookfield	"	4,547	250
Butler	"	2,812	290
Clarksville	"	1,186	85
Chillicothe	"	5,717	264
Carrollton	"	3,876	250
Clinton	"	4,737	250
Columbia	"	3.000	165
Excelsior Springs	"	2,034	275
Glasgow	"	1,761	195
Hannibal	"	12,857	120
Herman	"	1,410	100
Independence	"	6,380	290
Jefferson City	"	6,742	130
Kansas City	"	119,666	290
Kirksville	"	3,510	195
Louisiana	"	5,090	96
Lebanon	"	2,216	228
Lexington	"	4,527	256
Macon City	"	3,371	240
Marshall	"	4,297	208
Maryville	"	4,037	400
Mexico	"	4,789	160
Princeton	"	1,410	300
St. Joseph	"	42,324	355
St. Charles	"	6,161	35
Sedalia	"	14,068	230
Tarkio	"	1,156	410
Trenton	"	5,038	275

* Census 1895.

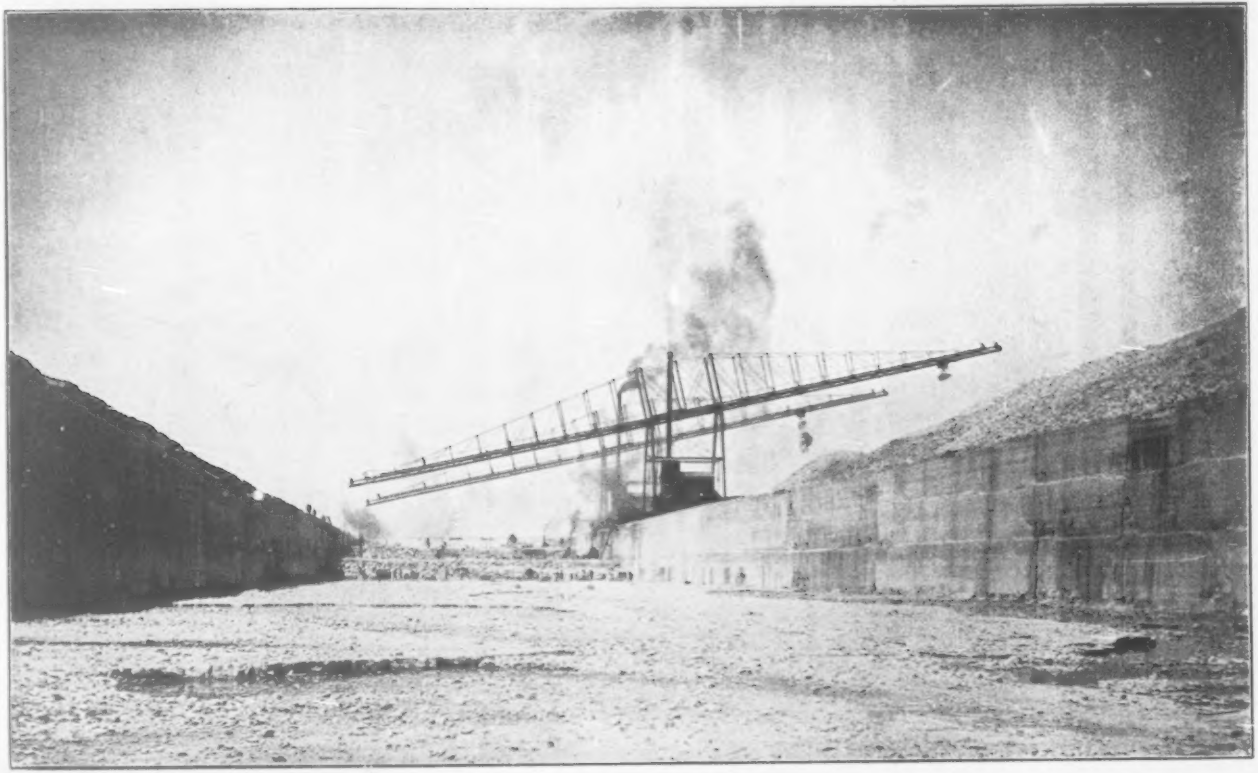
Name of city.	State.	Population 1890, unless otherwise stated.	Miles distant from St. Louis, Mo.
Argentine	Kansas	4,732	325
Atchison	"	13,963	365
Abilene	"	3,547	480
Belleville	"	1,868	520
Beloit	"	2,455	540
Clay Center	"	2,802	475
Clyde	"	1,137	500
Ellsworth	"	1,620	530
Concordia	"	3,184	510
Horton	"	3,316	310
Junction City	"	4,502	450
Kansas City	"	38,316	320
Leavenworth	"	19,768	350
Lansing	"	1,468	340
Lawrence	"	9,997	360
Maryville	"	1,913	480
Minneapolis	"	1,767	500
Manhattan	"	3,004	430
Norton	"	1,074	650
Olathe	"	3,294	360
Osborne	"	1,174	580
Ottawa	"	6,248	380
Pleasanttown	"	1,139	330
Paola	"	2,943	340
Phillipsburg	"	992	610
Salina	"	6,149	490
Seneca	"	2,032	330
Topeka	"	31,007	360
Valley Falls	"	1,180	360
La Porte	Indiana	7,126	410
Plymouth	"	2,723	410
Alma	Wisconsin	1,529	596
Black River Falls	"	2,068	596
Beloit	"	7,786	390
Baraboe	"	5,454	526
Beaver Dam	"	5,042	460
Chippewa Falls	"	9,196	576
Eau Claire	"	18,637	566
Fountain City	"	1,065	496
Grand Rapids	"	2,043	586
Hudson	"	3,338	586
Janesville	"	12,971	490
Kilbourn City	"	1,207	526
Menomonee	"	6,193	556
Merrill	"	8,607	646

Name of city.	State	Population 1890, unless otherwise stated.	Miles distant from St. Louis, Mo.
Madison	Wisconsin	15,950	440
Marshfield	"	4,586	626
La Crosse	"	28,759	466
Neillsville	"	2,206	536
Prescott	"	966	570
Prairie du Chien	"	3,286	410
Portage	"	5,419	506
Reedsburg	"	2,116	540
Rice Lake	"	3,162	610
St. Croix Falls	"	608	610
Stevens Point	"	8,995	606
Stoughton	"	2,926	420
Tomahawk	"	2,296	670
Wausau	"	11,013	636
Anoka	Minnesota	3,812*	616
Aitkin	"	1,670*	736
Alexandria	"	2,665*	836
Austin	"	5,077*	470
Brainard	"	7,031*	725
Belle Plaine	"	1,031*	636
Blue Earth	"	2,432*	710
Faribault	"	7,616*	596
Granite Falls	"	927	756
Hastings	"	3,848*	566
Henderson	"	1,006*	836
Hutchinson	"	2,011*	670
Little Falls	"	5,116*	686
Lake City	"	2,128	536
Minneapolis	"	192,833*	602
Winona	"	29,649*	491
Mankato	"	10,173*	651
Marshall	"	1,744*	755
New Ulm	"	4,790*	690
Northfield	"	3,456*	581
St. Paul	"	140,292*	586
Red Wing	"	7,685*	560
St. Peter	"	4,251*	946
Sauk Rapids	"	1,313*	656
Stillwater	"	12,004*	588
Owatonna	"	4,891*	606
Ashland	Nebraska	1,601	560
Aurora	"	1,862	600
Beatrice	"	13,826	620
Broken Bow	"	1,647	770
Columbus	"	3,134	640

*Census 1895.

Name of city.	State.	Population. 1890, unless otherwise stated.	Miles distant from St. Louis, Mo.
Central City	Nebraska	1,368	680
Crete	"	2,310	550
Edgar	"	1,105	570
Falls City	"	2,102	465
Fremont	"	6,147	585
Fairbury	"	2,630	520
Geneva	"	1,580	570
Grand Island	"	7,536	690
Hastings	"	13,584	630
Hebron	"	1,502	530
Humboldt	"	1,114	480
Kearney	"	8,074	740
Lexington	"	1,392	775
Lincoln	"	55,154	580
McCook	"	2,345	700
Nebraska City	"	11,494	505
North Platte	"	3,055	840
Neligh	"	1,209	700
Norfolk	"	3,038	665
O'Neill	"	1,226	740
Ord	"	1,208	720
Plattsmouth	"	8,392	520
Omaha	"	140,452	560
Red Cloud	"	1,839	580
St. Paul	"	1,263	710
Schuyler	"	2,160	610
Seward	"	2,108	570
Superior	"	1,614	560
Tecumseh	"	1,654	510
Wahoo	"	2,006	590
Wayne	"	1,178	680
West Point	"	1,842	620
Wilber	"	1,226	540
Wymore	"	2,420	506
York	"	3,408	585
Huron	South Dakota	2,514*	776
Sioux Falls	"	9,602*	664
Pierre	"	1,776	922
Watertown	"	2,709*	802
Yankton	"	3,814*	655
Bismarck	North Dakota	2,186	1,090
Jamestown	"	2,296	970
Mandan	"	1,328	1,095

* Census 1895.



CHARACTERISTIC ROCK CUT,— MAIN CHANNEL, SANITARY DISTRICT OF CHICAGO.— SECTION 10.

SANITARY DISTRICT OF CHICAGO

A Concise Report on its Organization, Resources, Constructive Work, Methods and Progress

AUTHORIZED BY THE BOARD OF TRUSTEES, NOVEMBER 1, 1899

Prepared by the Chief Engineer

John F. Higgins, Printer and Binder
196 and 198 Clark Street
Chicago

BOARD OF TRUSTEES.

WILLIAM BOLDENWECK,	1376 N. Clark Street
JOSEPH C. BRADEN,	159 La Salle Street
ZINA R. CARTER,	225 W. Sixteenth Street
BERNARD A. ECKHART,	377 Carroll Avenue
ALEXANDER J. JONES,	707 Tacoma Building
THOMAS KELLY,	1411 Unity Building
JAMES P. MALLETTE,	809 Tacoma Building
THOMAS A. SMYTH,	803 Jackson Boulevard
FRANK WENTER,	475 Ashland Boulevard

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WILLIAM BOLDENWECK,	PRESIDENT OF THE BOARD
JOSEPH F. HAAS,	CLERK OF THE DISTRICT
FRED M. BLOUNT,	TREASURER OF THE DISTRICT
ISHAM RANDOLPH,	CHIEF ENGINEER OF THE DISTRICT
CHARLES C. GILBERT,	ATTORNEY OF THE DISTRICT

OFFICES.

SECURITY BUILDING, CHICAGO.

COMMITTEES FOR 1898-9.

JUDICIARY.

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BERNARD A. ECKHART, ALEXANDER J. JONES,
JOSEPH C. BRADEN, THOMAS KELLY.

FINANCE.

ZINA R. CARTER, Chairman,
BERNARD A. ECKHART, FRANK WENTER,
THOMAS KELLY, ALEXANDER J. JONES.

ENGINEERING.

THOMAS A. SMYTH, Chairman,
JAMES P. MALLETTE, ALEXANDER J. JONES, ZINA R. CARTER,
FRANK WENTER, BERNARD A. ECKHART,
JOSEPH C. BRADEN, THOMAS KELLY, THE PRESIDENT.

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BERNARD A. ECKHART, ALEXANDER J. JONES,
ZINA R. CARTER THOMAS A. SMYTH.

LABOR.

JOSEPH C. BRADEN, Chairman,
THOMAS A. SMYTH, ALEXANDER J. JONES,
FRANK WENTER, BERNARD A. ECKHART,

HEALTH AND PUBLIC ORDER.

THOMAS KELLY, Chairman,
ALEXANDER J. JONES, JAMES P. MALLETTE,
THOMAS A. SMYTH, ZINA R. CARTER.

RULES.

THE PRESIDENT, Chairman,
JOSEPH C. BRADEN, ALEXANDER J. JONES,
JAMES P. MALLETTE, THOMAS KELLY.

REGULAR MEETINGS.

The Board of Trustees meets every Wednesday at 2 o'clock, P. M.

COMMITTEES ARE SUBJECT TO THE CALL OF THE CHAIRMAN.

COMPLETE LIST OF MEMBERS OF BOARD OF TRUSTEES.

JOHN J. ALTPETER	Elected December 12, 1889; served to December 2, 1895
ARNOLD P. GILMORE	Elected December 12, 1889; served to December 2, 1895
RICHARD PRENDERGAST	Elected December 12, 1889; served to December 2, 1895
WILLIAM H. RUSSELL	Elected December 12, 1889; served to December 2, 1895
FRANK WENTER	Elected December 12, 1889; served to December 2, 1895
CHRISTOPH HOTZ	Elected December 12, 1889; resigned January 16, 1892
JOHN A. KING	Elected December 12, 1889; resigned July 22, 1891
MURRY NELSON	Elected December 12, 1889; resigned June 19, 1891
HENRY J. WILLING	Elected December 12, 1889; resigned September 23, 1891
WILLIAM BOLDENWECK	Elected to fill vacancy, November 3, 1891
LYMAN E. COOLEY	Elected to fill vacancy, November 3, 1891
BERNARD A. ECKHART	Elected to fill vacancy, November 3, 1891
THOMAS KELLY	Elected to fill vacancy, November 8, 1892
WILLIAM BOLDENWECK	Re-elected November 5, 1895
JOSEPH C. BRADEN	Elected November 5, 1895
ZINA R. CARTER	Elected November 5, 1895
BERNARD A. ECKHART	Re-elected November 5, 1895
ALEXANDER J. JONES	Elected November 5, 1895
THOMAS KELLY	Re-elected November 5, 1895
JAMES P. MALLETTE	Elected November 5, 1895
THOMAS A. SMYTH	Elected November 5, 1895
FRANK WENTER	Re elected November 5, 1895

COMPLETE LIST OF OFFICERS OF DISTRICT.

PRESIDENT

MURRY NELSON	Elected February 1, 1890; served to December 2, 1890
RICHARD PRENDERGAST	Elected December 2, 1890; served to December 8, 1891
FRANK WENTER	Elected December 8, 1891; served to December 3, 1895
BERNARD A. ECKHART	Elected December 3, 1895; served to December 8, 1896
THOMAS KELLY	Elected December 8, 1896; served to December 7, 1897
WILLIAM BOLDENWECK	Elected December 7, 1897

CLERK

AUSTIN J. DOYLE	Elected February 1, 1890; resigned June 25, 1890
THOMAS F. JUDGE	Elected July 12, 1890; resigned January 1, 1896
JAMES REDDICK	Elected January 1, 1896; resigned December 1, 1898
JOSEPH F. HAAS	Elected December 1, 1898

TREASURER

BYRON L. SMITH	Elected February 1, 1890; resigned January 15, 1892
MELVILLE E. STONE	Elected January 23, 1892; served to December 2, 1896
FRED M. BLOUNT	Elected December 2, 1896

CHIEF ENGINEER

LYMAN E. COOLEY	Elected February 1, 1890; resigned December 10, 1890
WILLIAM E. WORTHEN	Elected December 17, 1890; resigned April 21, 1891
SAMUEL G. ARTINGSTALL	Elected May 9, 1891; resigned January 16, 1892
BENEZETTE WILLIAMS	Elected January 16, 1892; resigned June 7, 1893
ISHAM RANDOLPH	Elected June 7, 1893

ATTORNEY

GEORGE W. SMITH	Elected July 12, 1890; resigned April 25, 1891
ADAMS A. GOODRICH	Elected June 13, 1891; resigned February 23, 1892
ORRIN N. CARTER	Elected February 24, 1892; resigned August 15, 1894
GEORGE E. DAWSON	Elected August 15, 1894; resigned January 1, 1896
CHARLES S. DENEEN	Elected January 1, 1896; resigned April 1, 1896
WILLARD M. McEWEN	Elected April 1, 1896; resigned February 3, 1897
FREDERICK W. C. HAYES	Elected February 3, 1897; died November 1, 1898
CHARLES C. GILBERT	Elected November 30, 1898

PREFACE

THE object to be accomplished by the work of the Sanitary District of Chicago is the reversal of the eastward flow of the Chicago River into Lake Michigan and the restoration of the ancient western discharge of the lake into the Desplaines Valley. The desired outcome of this change is the creation of a sanitary and ship canal—sanitary in that the result of the completed project will be the diversion of all the city sewage now entering the lake into the canal, thereby preserving the city's water from pollution. The ship canal is a necessary and inevitable result of the work which has created the largest artificial waterway yet constructed. The work of the Sanitary District in the Chicago River is, first, dredging from the lake to Robey Street to a uniform depth (except over tunnels) of twenty feet below the flow line. Second, constructing between Monroe and Van Buren Streets a covered conduit or by-pass through the lands of the Pennsylvania and Alton Railroad Companies. This by-pass has a section for flow of water fifty feet wide and sixteen feet deep. Third, removing two center-pier bridges—one at Taylor Street and the other the railroad bridge just south of it and building in their places bascule bridges of the rolling lift type. At Canal Street a bascule bridge will be substituted for the now existing "jack-knife" bridge.

At sundry places the river has been, or is being widened and re-docked. The result of these improvements will be an adequate provision for a flow of three hundred thousand cubic feet of water per minute. The distance from the lake via the river to Robey Street is about six miles.

I. R.

CHICAGO, NOVEMBER 1, 1899.

DESCRIPTION OF THE WORK.

The Main Drainage Channel of the Sanitary District of Chicago is now practically completed from its confluence with the South Branch of the Chicago River, at Robey Street, in the City of Chicago, to Lockport, its southern terminus, in Will County, Illinois, a distance of 28.05 miles, as shown upon the accompanying map. At the southern end of the channel the controlling works are located. Beyond these works, the construction undertaken by the District involves the work necessary for conducting the flow from the channel, in conjunction with the waters of the Desplaines River, down the declivity to and through the City of Joliet, and the making of such changes in the Illinois and Michigan Canal as the new conditions developed will render necessary.

The first work put under contract extended southwesterly from the Willow Springs road, and these sections were numbered consecutively Nos. 1 to 14. Average length of sections, nearly one mile. Easterly from Willow Springs road the sections are lettered from A to O, omitting J. The lettered sections are, except for a short distance near Summit, entirely in glacial drift, defined in the specifications thus: "Glacial drift shall comprise the top soil, earth, muck, sand, gravel, clay, hard pan, boulders, fragmentary rock displaced from its original bed, and any other material that overlies the bed rock."

The sections from 1 to 14 were put under contract in July,

1892; those from A to F were put under contract late in 1892 and early in 1893; and those from G to M inclusive were contracted for in December, 1893. Sections N and O were put under contract May 2d, and Section 15 August 27th, 1894.

Earth was first broken on "Shovel Day," September 3, 1892, on the rock cut below Lemont.

The Desplaines Valley is traversed by the river from which it takes its name—a stream of wide fluctuations with no constant and reliable fountain supply. During some seasons its whole discharge would pass through a six-inch pipe, and at others its volume reaches 800,000 cubic feet per minute. Then it rolls majestically along, flooding the whole valley. Such being the situation, control of this stream was a condition precedent to the successful prosecution of the work upon the Main Channel. This control has been secured by the outlay of $1,000,156 in constructing what is known as the "River Diversion Channel."

About thirteen miles of new river channel had to be excavated, parallel with the location of the Main Drainage Channel, and about nineteen miles of levee built to divorce the waters of the Desplaines watershed from the channel which is to receive the waters of Lake Michigan and pass them on to the Mississippi River, via the lower Desplaines and the Illinois Rivers. The width of the River Diversion Channel on the bottom is 200 feet, side slopes one and one-half to one, grade generally 12-100 per 1,000 feet.

At the head of this River Diversion it was necessary to provide a safety valve in the form of a spillway, to allow surplus water to flow toward Chicago, because arrangements have not as yet been perfected for carrying the entire flood waters of the Desplaines through Joliet.

This spillway is a concrete dam capped with cut stone, and its wings faced with stone masonry; it is 397 feet long and its crest is 16.25 feet above Chicago datum (this datum is referred to the low water of Lake Michigan of 1847, and is 579.61 feet above sea level at Sandy Hook). No water flows over this spillway until the volume passing the water gauge above it reaches 300,000 cubic feet per minute.

The cross-section of the earth sections from A to E inclu-



ATCHISON, TOPEKA AND SANTA FE BRIDGE ON SECTION G.

sive, a distance of 5.3 miles, is 202 feet on the bottom, side slopes two to one. This section extends for about 500 feet into the west end of F and then reduces to 110 feet on the bottom, preserving the same side slopes for a distance of 3.8 miles. The explanation for this change of cross-section is as follows: Throughout the rock sections, and those sections in which there is a preponderance of hard material, or where rock may appear,

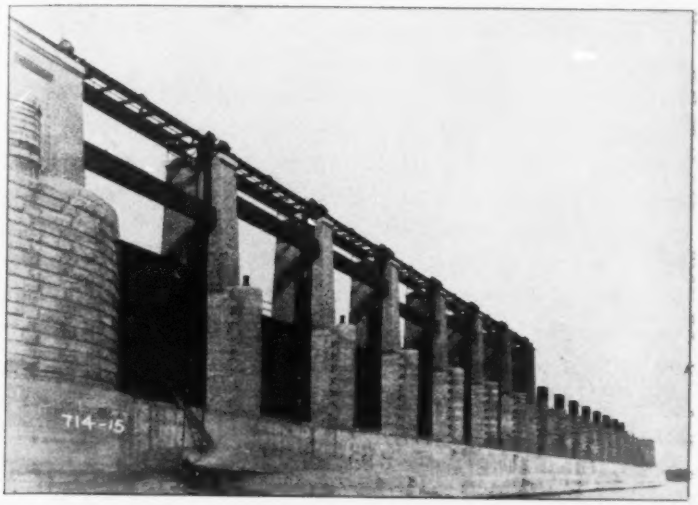
the section adopted is designed according to law for a flow of 600,000 cubic feet of water per minute, which means provision for a population of 3,000,000 people. The narrower channel provides for the flow of 300,000 cubic feet per minute, or for about the present population of Chicago. The enlargement of the narrow channel can be made by the easier methods of excavation, such as dredging, whenever the needs of the city require it. The grade throughout the lettered sections is one foot in 40,000 (.025 per 1,000 feet) and the bottom of the channel at Robey street is 24.448 feet below datum. The numbered sections, from No. 1 to No. 6, inclusive, are underlaid with solid rock. The width of the bottom, in rock, is 160 feet, and walls of masonry laid in cement have been built upon the rock surface to a height of five feet above datum. Sections 7 to 14, inclusive, are in solid rock; width at bottom 160 feet, sides vertical, prism taken out in three stopes with offsets of six inches on each side for each cut, making top width 162 feet; grade in rock one foot in 20,000 (.05 per 1,000).

Section No. 15 is also in rock and its cross-section is enlarged at its south end so as to form a "windage basin" in which large vessels may be turned around. The controlling works are located on this section. These works consist of gates or movable dams by which the flow of water from the Main Channel into the tail race, which is to deliver the outflow into the Desplaines River, can be controlled.

This river below Lockport follows the trough of the valley down a steep declivity to the canal basin in Joliet. The fluctuations in Lake Michigan, by varying height of water surface, will be felt at the controlling works, and provisions have been made to meet these fluctuations within a range of five feet above datum and eight feet below, or an extreme oscillation of

thirteen feet. The fall from datum at the controlling works to the level of the upper basin is about forty-two feet, in a distance of about four and one-third miles.

The controlling works comprise seven sluice gates of metal, with the necessary masonry bulk heads and one bear trap dam. The sluice gates may be considered as a modification of what is known as the Stoney gate type, gates having a vertical play of twenty feet and openings of thirty feet each.



CONTROLLING WORKS.— VIEW SHOWING STONEY GATES.

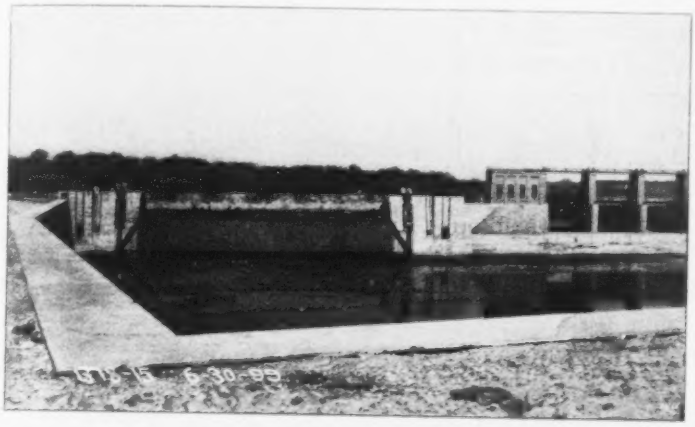
The bear trap dam has an opening of 160 feet and an oscillation of seventeen feet vertically. This dam is essentially two great metal leaves hinged together and working between masonry bulk heads. The down-stream leaf is securely hinged to a very heavy foundation, and the up-stream leaf is so placed as to present the barrier to the water. This structure is operated by

admitting water through properly constructed conduits, controlled by valves, beneath the leaves just described. To raise the crest of the dam, water is admitted from the up-stream side and the discharge shut off until the desired height is obtained, and then the valves are adjusted so that the volume of water beneath the leaves shall be constant. To lower the crest, the water beneath the leaves is drawn off until the desired height is reached, when the valves are again arranged so as to maintain a constant volume of water.

All the bridges on the Main Channel are movable structures. There are six bridges for public highways. One was built for the use of the Southwest Boulevard and Western Avenue. It has double roadways—one being for heavy and the other for light traffic. There are seven railway bridges, one being an eight-track rolling lift structure, with a channel span of one hundred and twenty feet. One is a four-track swing bridge, and the others are double-track structures. The bridges on the walled and solid rock sections of the Channel are all "bob-tailed" (or have arms of unequal length), counterweighted structures, with pivot piers on the right bank, and long arms spanning the entire channel, thus avoiding any obstruction to the flow from center and protection piers. These bridges are of latest design, conforming to the heaviest modern specifications. The entire weight of the iron and steel used in their construction was 22,678,000 pounds.

The work of the District south of the controlling works consists of straightening, widening and deepening the Desplaines River, to give it a flowage capacity of 1,500,000 cubic feet of water per minute. This involved, in the City of Joliet, the rebuilding of Dam No. 1, the removal of Dam No. 2 (both structures belonging to the Illinois and Michigan Canal),

the removal of the Adam Dam, the rebuilding of Lock No. 5, and the removal of the Guard Lock. At Jefferson Street, the stone-arched bridge has been removed to make way for a steel bridge of greater span and width, equal to that of the street. The Cass Street bridge also gives place to a modern steel structure of greater span and width. From Lock No. 5 to Jefferson Street a massive concrete wall has been constructed to separate the Illinois and Michigan Canal from the river. At Jackson Street a great deal of costly excavation has been made



CONTROLLING WORKS.—VIEW SHOWING BEAR TRAP DAM.

to admit of an extensive water power development, which is the property of the State.

The total amount of excavation involved in the construction of the Main Channel is 28,500,000 cubic yards of glacial drift and 12,910,000 cubic yards of solid rock, or an aggregate of 41,410,000 cubic yards, to which must be added the material excavated from the River Diversion; glacial drift, 1,810,000

cubic yards; solid rock, 258,659 cubic yards; total River Diversion, 2,068,659; grand total Main Channel and River Diversion, 43,478,659 cubic yards. All of this work is now completed or under contract, and in addition thereto 380,050 cubic yards of retaining wall. The retaining wall is all laid in cement mortar. The rock when broken up expands about 80 per cent, and therefore the volume of the rock spoil banks will be nearly 22,078,000 cubic yards. The whole volume of spoil (earth and rock), if deposited in Lake Michigan in forty feet of water, would make an island one mile square, with its surface twelve feet above the water line.

The largest amount of material excavated in any one month, since the work began, was in August, 1894—1,291,688 cubic yards of glacial drift, and 413,164 cubic yards of solid rock; but the largest estimate returned was for the month of June, 1895, amounting to $742,365, representing the excavation of 959,074 cubic yards of glacial drift, 555,500 cubic yards of solid rock, and 13,799 cubic yards of masonry laid in cement.

During the month of July, 1894, 74,800 cubic yards of solid rock were removed by the contractors for Section 8, a record which, up to that period, had probably never been equaled in all the ages since man began to quarry stone; since that time, however, this remarkable feat has been eclipsed by the contractors for Section 14, who, during the month of April, 1895, excavated 86,400 cubic yards of solid rock.

DIMENSIONS AND COST OF CHANNEL.

The distance from the mouth of the Chicago River to the junction of the Main Channel with the West Fork of the South Branch at Robey Street is about six miles.

The length of the Main Channel proper, from Robey Street to the Controlling Works at Lockport, is 28.05 miles—making a total of 34.05 miles.

The dimensions of the Channel are: Robey Street to Summit, 7.8 miles; 110 feet wide at bottom; 198 feet at water line



JUNCTION OF EARTH AND ROCK SECTIONS.

with minimum depth of water, 22 feet. Summit to Willow Springs, 5.3 miles; 202 feet wide at bottom, 290 feet wide at water line, with 22 feet depth of water; grade of earth channel one foot in forty thousand feet, or 1⅝ inches per mile. The side slopes in earth are one foot vertical to two feet horizontal. At Willow Springs the channel narrows to the walled and rock

cross section, extending 14.95 miles to Lockport, 160 feet wide at bottom, 162 feet at top; grade in rock one foot in twenty thousand, or 3¼ inches per mile.

The velocity in earth is figured for 1¼ miles per hour and in rock 1.9 miles per hour.

COST OF MAIN CHANNEL AND AUXILIARY WORK UNDER CONTRACT AND ESTIMATED TO JANUARY 1, 1900.

CONSTRUCTION.

Diversion of Desplaines River	$ 1,000,156 38
Main Channel, Robey Street to Lockport	18,318,609 43
Controlling Works	261,750 67
Chicago River, Dredging and By-pass	537,975 92
Desplaines River Improvement, Controlling Works to Joliet	790,126 12
Railroad and Highway Bridges	2,611,348 00
Miscellaneous	73,047 68
Contingency Fund	100,000 00
Total estimated cost of construction	$ 23,693,014 20

MISCELLANEOUS.

Capitalization of Railroad Bridges	$ 410,000 00
Right of Way	3,175,000 00
Estimated cost of Administration to January 1, 1900	2,190,000 00
Maintenance Account	96,000 00
General Account	457,000 00
Total estimated cost, exclusive of Interest Account	$ 30,021,014 20
Estimated Interest charges to January 1, 1900	3,504,677 00
Grand total	$ 33,525,691 20

EXPENDITURES TO SEPTEMBER 1, 1899.

Right of Way	$ 3,172,185 05	
Construction	21,379,675 36	
Administration, including General Account	2,550,629 49	
Interest	2,811,792 94	
Capitalization of Bridges	261,548 20	
Maintenance	87,421 30	
		$30,263,252 34
Balance required to January 1, 1900		$ 3,262,438 86

APPROXIMATE QUANTITIES INVOLVED IN WORK—CUBIC YARDS.

	Main Channel.	River Diversion.	Totals.
Glacial Drift	28,500,000	1,810,000	30,310,000
Solid Rock	12,910,000	258,659	13,168,659
Retaining Wall	.....	.....	380,050
Bridge Masonry	.....	.....	84,000
Totals	41,410,000	2,068,659	
		41,410,000	
Grand Total, Glacial Drift and Solid Rock		43,478,659	

On the earth sections some novelties were introduced. On Sections L and M, cars, specially constructed, were loaded by steam shovels and drawn by steam hoists up a steep incline to a proper height where they ran on to a tipple and were automatically dumped. Each incline was equipped with two four-yard cars, which loaded and dumped alternately. On Sections I and K, the contractors erected bridges spanning the spoil bank at proper height, their supporting piers being carried on trucks which travelled on tracks parallel with the channel. From the channel end of the bridge, an inclined track ran down into the cut. In connection with this device, two eight-yard cars were used which were successively loaded by steam shovel, drawn up the incline on to the bridge by steam hoist, and then automatically dumped and immediately returned to the pit. An output of 100 yards per hour was probably sustained by this combination of devices.

On Section H, a conveying machine designed by Messrs. Hoover & Mason, was constructed on a mammoth scale. It was essentially a bridge spanning the channel with cantilever arms projectlng far enough beyond on each side to overhang the spoil area. On this structure were mounted the necessary sprocket wheels and other machinery for carrying a series of steel pans which formed the conveyor belt. The structure was 640 feet from end to end, mounted on trucks traveling upon tracks parallel with the channel, and its capacity was 500 cubic yards per hour. On Section F the material was taken from the steam shovel by cars fitted with pneumatic dumping apparatus, the power for which was supplied from the locomotive. The engineer operated these dumps just as he would apply the air brakes. Sections A, B and a portion of C are located in the old



CHARACTERISTIC EARTH CUT.—MAIN CHANNEL, SANITARY DISTRICT OF CHICAGO.—SECTIONS I AND K.

channel of the Desplaines River, and were overlaid with muck to a considerable depth. This muck was removed by hydraulic dredges. Each of these dredges has a capacity of about 2,500 cubic yards in ten hours, and this output in solid matter represents about eight per cent. of the capacity of the pumps. One great advantage of the hydraulic method of removal is that the material can be removed to any desired dumping ground within a distance of 3,000 feet without adding anything to the contract price of the excavation.

On those sections which are partly in earth and partly in rock, all of the usual methods of removing earth were employed, varied to suit peculiar conditions or to meet the ideas of the contractors doing the work. On Section No. 6 a large amount of muck had to be removed, and a very ingenious contractor improvised a hydraulic dredge at a very small cost, and did the work at a very moderate expense.

On the rock sections the sides were cut down vertically by channel machines, and the merits of the several devices were satisfactorily demonstrated on this work. Of course steam drills were used, and on the sections which were best planted these were worked from a central power station by compressed air. The top lifts were removed by the use of carts and tram cars, the traction for which latter was usually supplied by steam hoisting engines. The lower lifts were taken out by the use of cable-ways, high power derricks and cantilever conveyors.

The cable-ways as first constructed were not very successful, but experience gained upon this work resulted in improvements from time to time, until by the adoption of a simple improvement devised by Mr. H. C. Locher, one of the contractors, they were brought to a stage of efficiency which made them worthy competitors of the cantilever conveyors. The

high power derricks used upon two of the sections did not come up to the expectations of the builders, and their use was confined to the machines already in place. The revolving derricks on Section 14, after a great deal of costly experimentation, developed considerable merit. The cantilevers are probably the most perfect devices now known for hoisting and disposing of material from rock cuttings such as these.

The average daily output of rock for the month of June, 1895, reached 21,365 cubic yards, requiring the use of eight tons of dynamite.

The original contracts for this work called for its completion April 30, 1896; at that date Sections 8, 9, 10, 11, 12, 13 and 14 were practically done, also Sections I, K, L and M.

When finally completed, this Channel will be a free waterway, navigable for any craft drawing less than twenty-two feet of water. The cutting being made by this District constitutes nearly two-thirds of the entire cost of creating a channel from Chicago to the Mississippi, which would be navigable for the largest boats which will be able to ply between St. Louis and New Orleans, after the present plans for the improvement of the Mississippi will have been completed. The creation of such a channel seems to be inevitable; a commercial necessity sooner or later to be recognized and undertaken by the General Government, which must carry out the enterprise, if it is ever executed.

EXTENT, POWERS AND RESOURCES OF THE DISTRICT.

This Channel is being constructed under the general law for incorporating Sanitary Districts, enacted by the Legislature of the State of Illinois in 1889. The Sanitary District of Chicago comprises all of the city north of Eighty-seventh Street, together with some forty-three square miles of Cook County, outside of the city limits, which will be directly benefitted by the improvement. The population of the City of Chicago in 1890, according to the Federal census, was 1,099,850, and the equalized assessed valuation of real estate and other property subject to taxation in the Sanitary District for the year 1898, was two hundred and eighteen million two hundred and ninety-nine thousand nine hundred and seventy-seven ($218,299,977) dollars, being about one-tenth of the real value.

The Trustees are elected by popular vote and form an independent organization separate and distinct from the municipal government of Chicago. These Trustees may levy and collect taxes for carrying on the work entrusted to them to the extent of one-half of one per cent. of the value of the taxable property within the corporate limits of the District, as the same shall be assessed and equalized for State and County taxes of the year in which the levy is made, and, by an amendment, passed by the Thirty-ninth General Assembly of Illinois in 1895, this power was increased to one and one-half per cent for a period of three years, beginning with the year 1895. Subsequently, it appearing that the District would not have sufficient funds to complete the work, the Trustees procured the passage of an act by the General Assembly in 1897, extending the levy of one and one-half per cent for two years more or until and including the year 1899. They may issue bonds to

the extent of five per cent of the value of the taxable property of the District, as determined by the last assessment for State and County taxes previous to the issue of said bonds; provided, however, that said five per cent shall not exceed the sum of fifteen million (15,000,000) dollars.

Under this authority, the District has already issued $13,990,000 of bonds, all payable in currency, $8,000,000 being five per cent. bonds, $5,600,000 being four and one-half per cent. bonds, and $390,000 being three and one-half per cent. bonds, running from one year to twenty years, except the three and one-half per cent, bonds, which run for twenty years from date; of the others, one-twentieth of the issue must be paid off and retired each year, and $3,200,000 have already been retired, leaving $10,790,000 now outstanding. Additional bonds to the amount of $430,000 will be retired on January 1, 1900. These bonds have been sold at an average premium of about one and one-tenth per cent. The taxes afford a revenue sufficient to pay the interest on these bonds, to pay off and retire one-twentieth of the issue each year, and leave a surplus to apply upon the current obligations of the District incurred for construction.

TO VIEW THE WORK.

The Channel is closely paralleled by the Chicago and Alton Railroad and the Atchison, Topeka and Santa Fe Railroad, and is easily accessible from the stations of these roads between Chicago and Lockport.

All sections can be reached by their trains as follows:

Chicago & Alton Railroad, Canal and Adams Streets—"Alton" trains stop at Brighton Park, Summit, Mt. Forest, Willow Springs, Sag Bridge, Lemont and Lockport.

Atchison, Topeka & Santa Fe Railroad, Dearborn and Polk Streets—"Santa Fe" trains stop at Gahan & Byrne, McCook, Gary, Willow Springs, Lemont, Romeo and Lockport.

See local time cards of each road for particulars.

LIST OF CONTRACTORS ON MAIN CHANNEL OF THE SANITARY DISTRICT OF CHICAGO.

NOVEMBER, 1899.

SEC.	MATERIAL.	CONTRACTOR.	P. O. ADDRESS.
Chicago River	Dredging	Lydon & Drews Co	1441 Unity Building, Chicago.
O	Earth	McMahon & Montgomery Co. et al.	425 N. Halsted St., Chicago.
N	Earth	Hayes Brothers et al	32d St. and Maplewood Ave., Chicago.
M	Earth	The Heidenreich Co	541 Rookery Building, Chicago.
L	Earth	The Heidenreich Co	541 Rookery Building, Chicago.
K	Earth	Christie & Lowe	512 N. Y. Life Building, Chicago.
I	Earth	Christie & Lowe	512 N. Y. Life Building, Chicago.
H	Earth	Gahan & Byrne	4209 S. Halsted St., Chicago.
G	Earth	Gahan & Byrne	4209 S. Halsted St., Chicago.
F	Earth	Gahan & Byrne	4209 S. Halsted St., Chicago.
E	Earth	Halvorson, Richards & Co	St. Paul, Minn.
D	Earth	E. D. Smith & Co	Philadelphia, Pennsylvania.
C	Earth	Western Dredging and Improvement Co	Lafayette, Indiana.
B	Earth	Heidmaier & Neu	908 Security Building, Chicago.
A	Earth	Heidmaier & Neu	908 Security Building, Chicago.
1	Earth and Rock	Griffiths & McDermott	40 Lakeside Building, Chicago.
2	Earth and Rock	McArthur Brothers	1410 Gt. Northern Bldg., Chicago.
3	Earth and Rock	Gilman & Co	Marshalltown, Iowa.
4	Earth and Rock	McArthur Brothers	1410 Gt. Northern Bldg., Chicago.
5	Earth and Rock	The Qualey Construction Co	Chicago.
6	Earth and Rock	Mason, Hoge & Co	Louisville, Ky.
7	Rock	Mason, Hoge & Co	Louisville, Ky.
8	Rock	Mason, Hoge, King & Co	Louisville, Ky.
9	Rock	Halvorson, Richards & Co	St. Paul, Minn.
10	Rock	E. D. Smith & Co	Philadelphia, Pennsylvania.
11	Rock	Mason, Hoge & Co	Louisville, Ky.
12	Rock	Mason, Hoge & Co	Louisville, Ky.
13	Rock	Mason, Hoge & Co	Louisville, Ky.
14	Rock	Smith & Eastman	502 First National Bank Building, Chicago.
14	Retaini'g Walls	Campbell & Dennis	Joliet, Ill.
15	Rock	Wright, Meysenburg, Sinclair & Carry	1301 Fisher Bldg., Chicago.
15	Reg'lat'g W'rks	Christie & Lowe	512 N. Y. Life Building, Chicago.
15	Reg'lat'g W'rks	Griffiths & McDermott Construction Co	40 Lakeside Building, Chicago.
16	Earth and Rock	Hayes Bros	34th St. and Kedzie Ave., Chicago.
17	Earth and Rock	Heidmaier & Neu	908 Security Building, Chicago.
18	Earth and Rock	Gahan & Byrne	4209 S. Halsted St., Chicago.

FILED
APR 9 1900
JAMES H. MCKENNEY
Clerk.

Supreme Court of the United States,

OCTOBER TERM, 1899.

No. 7, Original.

The State of Missouri,

COMPLAINANT,

vs.

The State of Illinois and the Sanitary District of Chicago,

DEFENDANTS.

Brief and Argument of Defendants in Support of the Demurrer to the Bill of Complaint.

EDWARD C. AKIN,
Attorney-General of the State of Illinois.

CHARLES C. GILBERT,
SAMUEL M. BURDETT,
Attorneys for the Sanitary District of Chicago.

WILLIAM M. SPRINGER,
of Counsel for Defendants.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

NUMBER 7, ORIGINAL.

THE STATE OF MISSOURI, COMPLAINANT,

v.

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

Brief and Argument in Support of the Demurrer to the Bill of Complaint.

ORIGINAL JURISDICTION.

The Complainant in this action invokes the original jurisdiction of this Court. The records of this Court contain but few cases of this kind. It is conceded that the judicial power of the United States under the Constitution extends to controversies between two or more States, and between a State and citizens of another State; and that in all cases, justiciable in this Court, in which a State shall be a party, this Court shall have original jurisdiction. (Constitution of the United States, Sec. 2, Art. III.) Yet,

ADMISSIONS.

The Defendants, by filing a demurrer to the complaint in this case, are held to admit the truth of the facts alleged in the complaint only so far as they are material, relevant, and well pleaded. The allegation in the complaint that the State of Missouri, unless Defendants are restrained from committing the acts complained of, will be deprived of the use of the waters of the Mississippi River, for drinking and for domestic, manufacturing and agricultural purposes, is not sufficient to show wherein and to what extent the State of Missouri would be injured. The gist of this action is a threatened injury to Complainant. The damage which Complainant may sustain must be shown and it must be stated with convenient particularity. The allegation in the complaint is too vague, uncertain, and indefinite to put Defendants on notice as to the nature of the case to be proved. The fact as to damage not having been well pleaded by Complainant, Demurrants cannot be held to have admitted the truth of said allegation.

In the case of Spooner *v.* McConnell *et al.*, 1 McLean (U. S.), 337, McLean, Circuit Judge, held: "The Complainant alleges generally, that he will be injured in his property by the construction of the dam, and on these grounds prays an injunction; but he does not show how he will be injured. This is necessary, that the Court may judge whether the wrong complained of entitles him to an injunction. Every wrong done in this way, on which an action may be sustained, will not entitle the party to an injunction. The facts must present a case which can not be adequately redressed in any other form."

In the case of Bowen *v.* Mauzy, 117 Ind. 258, it appeared that the complaint for an injunction to restrain the erection of a blacksmith shop, stated: "The erection

and maintaining of a blacksmith shop at such place will destroy the free use of complainant's property." But the complaint did not allege that such business could not be conducted so as not to injure the complainant, nor that the defendants were intending to conduct it improperly, nor that they could not and would not conduct it so as to prevent all injury. In that case the Supreme Court of Indiana held, that the truth of these allegations of injury were not admitted by demurrer, they being mere conclusions. 12 Encyc. of P. & P., p. 1026.

Causes of Demurrer.

The Defendants in this case demur to the Bill of Complaint, filed herein, for the reason that the matters therein contained are not sufficient in law for the Complainant to maintain its action against the State of Illinois and the Sanitary District of Chicago, and they submit to the Court the following causes of demurrer:

First: That this Court has no jurisdiction of either the parties to, or of the subject-matter of this suit, because it appears upon the face of said Bill of Complaint, that the matters complained of, as set forth therein, do not constitute within the meaning of the Constitution of the United States, any controversy between the State of Missouri and the State of Illinois, or any of its citizens.

Second: That the matters alleged and set forth in said Bill of Complaint show that the only issues presented therein arise, if at all, between the State of Illinois and a public corporation created under the laws of said State, and certain cities and towns, in their corporate capacity as such, in the State of Missouri, and certain persons in said State of Missouri, residing on or near the banks of the Mississippi River, and which matters so stated in said

Bill of Complaint, if true, do not concern the State of Missouri as a corporate body or State.

Third: That said Bill of Complaint shows upon its face that this suit is in fact for and on behalf of certain cities and towns in said State of Missouri, situate on the banks of the Mississippi River, and certain persons who reside in said State on or near the banks of said river; and that, although the said suit is attempted to be prosecuted for and in the name of the State of Missouri, said State is, in effect, loaning its name to said cities and towns and to said individuals, and is only a nominal party to said suit, and that the real parties in interest are the said cities and towns in their corporate capacity as such, and said private persons or citizens of said State.

Fourth: That it appears upon the face of said Bill of Complaint, that the said State of Missouri, in her right of sovereignty, is seeking to maintain this suit for the redress of the supposed wrongs of certain cities and towns in said State, in their corporate capacity as such, and of certain private citizens of said State, while under the Constitution of the United States and the laws enacted thereunder, the said State possesses no such sovereignty as empowers it to bring an original suit in this Court for such purpose.

Fifth: That it appears upon the face of said Bill of Complaint, that no property rights of the State of Missouri are in any manner affected by the matters alleged in said Bill of Complaint; nor is there any such property right involved in this suit as would give this Court original jurisdiction of this cause.

Sixth: That in order to authorize this Court to maintain original jurisdiction of this suit as against the State of Illinois, or against any citizens of said State, it must appear that the controversy set forth in the Bill of Com-

plaint and to be determined by this Court, is a controversy arising directly between the State of Missouri and the State of Illinois, or some of its citizens, and not a controversy in vindication of the alleged grievances of certain cities and towns in said State or of particular individuals residing therein.

Seventh: That said Bill of Complaint is in other respects uncertain, informal, and insufficient, and that it does not state facts sufficient to entitle the said State of Missouri to the equitable relief prayed for in said Bill of Complaint.

We will consider these causes of demurrer generally and without special reference to the order in which they are stated.

Controversies Between States.

As to controversies between States, in the articles of Confederation, adopted in 1778, Article IX, Par. 2, it was provided as follows: "The United States in Congress Assembled, should also be the last resort on appeals in all disputes and differences now subsisting or that may hereafter arise between two or more States concerning boundary jurisdiction or any other cause whatever, which authority shall always be exercised in the manner following."

Then follows a provision, showing in what manner any State having a controversy with another may have such controversy determined.

The third paragraph of said Articles points out the methods for settling "all controversies," concerning the private rights of soil claimed under grants of two or more States.

These provisions were deemed impracticable for settling controversies between States by the framers of the Federal Constitution.

In the opinion of this Court, by his honor, Mr. Chief Justice Fuller, in the case of the State of Louisiana against the State of Texas, handed down at this term of court, on the 15th day of January last, there is recited the various steps which were taken in the Constitutional Convention, which led up to the adoption of clauses 1 and 2 of the second section of Article III, of the Constitution of the United States. That part of the opinion is so applicable to the case at bar, that we beg pardon of the Court for inserting it at length in our brief; it is as follows:

"In the Constitutional Convention, the Committee of Detail, composed of Rutledge, Randolph, Gorham, Ellsworth and Wilson, to which the resolutions arrived at by the Convention and sundry propositions had been referred, reported on the sixth of August, A. D. 1787, a draft of a constitution, consisting of twenty-three articles.

"The second section of the ninth article provided that as to 'all disputes and controversies now subsisting, or that may hereafter subsist, between two or more States, respecting jurisdiction or territory,' the Senate should have power to designate a special tribunal to finally determine the same by its judgment; and by the third section, 'all controversies concerning lands claimed under different grants of two or more States' were to be similarly determined.

"The third section of the proposed eleventh article provided, among other things, that the jurisdiction of the Supreme Court should extend 'to controversies between two or more States, except such as shall regard territory or jurisdiction; between a State and citizens of another State; between citizens of different States; and between a State, or the citizens thereof, and foreign States, citizens or subjects.'

"On the twenty-fifth of August Mr. Rutledge said in

respect to sections two and three of article nine: 'This provision for deciding controversies between the States was necessary under the confederation, but will be rendered unnecessary by the national judiciary now to be established;' and on his motion the sections were stricken out.

"The words 'between citizens of the same State claiming lands under grants of different States' were subsequently inserted in the third section of the eleventh article, and the words 'except such as shall regard territory or jurisdiction' omitted. 1 Elliot, 223, 224, 261, 262, 267, 270; 5 Elliot, 471; Meigs on Growth of the Constitution, 244, 249.

"Clauses 1 and 2 of the second section of Article III of the Constitution as finally adopted read:

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

"The reference we have made to the derivation of the

words 'controversies between two or more States' manifestly indicates that the framers of the Constitution intended that they should include something more than controversies over 'territory or jurisdiction,' for in the original draft as reported the latter controversies were to be disposed of by the Senate, and controversies other than those by the judiciary, to which by amendment all were finally committed. But it is apparent that the jurisdiction is of so delicate and grave a character that it was not contemplated that it would be exercised save when the necessity was absolute and the matter in itself properly justiciable.

"Undoubtedly, as remarked by Mr. Justice Bradley in Hans *v.* Louisiana, 134 U. S. 1, 15, the Constitution made some things 'justiciable which were not known as such at the common law; such, for example, as controversies between States as to boundary lines, and other questions admitting of judicial solution . . . The establishment of this new branch of jurisdiction seemed to be necessary from the extinguishment of diplomatic relations between the States. Of other controversies between a State and another State or its citizens, which, on the settled principles of public law are not subjects of judicial cognizance, this court has often declined to take jurisdiction. See Wisconsin *v.* Pelican Ins. Co., 127 U. S. 265, 288, 289, and cases there cited.'

"By the judiciary act of 1789 the judicial system was organized and the powers of the different courts defined. Its thirteenth section, carried forward as section 687 of the Revised Statutes, provided 'that the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a State is a party, except between a State and its citizens; and except also between a State and citizens of other States, or aliens, in which latter case it shall have original but not exclusive jurisdiction.'

"The language of the second clause of the second section of Article III, 'in all cases in which a State shall be party,' means in all the *enumerated cases* in which a State shall be a party, and this is stated expressly when the clause speaks of the other cases where appellate jurisdiction is to be exercised. This second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction, but does not profess to confer any. The original jurisdiction depends solely on the character of the parties and is confined to the cases in which are those enumerated and those only. California *v.* Southern Pacific Railroad Company, 157 U. S. 229, 259; United States *v.* Texas, 143 U. S. 621. And by the Constitution and according to the statute, the original jurisdiction of this court is exclusive over suits between States, though not exclusive over those between a State and citizens of another State."

As stated by this Court in that case the language of the second clause of the second section of Article III, of the Constitution of the United States, in reference to cases in which a State shall be a party, refers to the "enumerated cases," in which a State shall be a party. This is evident from the subsequent sentence, which contains the phrase, "in all other cases before mentioned." The second clause merely distributes the jurisdiction conferred, into original and appellate, but does not confer any new jurisdiction.

The opinion of this Court in the Louisiana case *supra*, after referring to the XIth amendment to the Constitution and after quoting the language of Mr. Chief Justice Waite, in the cases of New Hampshire *v.* Louisiana, and New York *v.* Louisiana, 108 U. S. 76, contains the following paragraph:

"In order to maintain jurisdiction of this Bill of Com-

plaint as against the State of Texas, it must appear that the controversy to be determined is a controversy arising directly between the State of Louisiana and the State of Texas, and not a controversy in vindication of the grievances of particular individuals."

The bill of complaint in the Louisiana case, set forth, in substance, that the City of New Orleans was located in the State of Louisiana; that there were several lines of railroad running directly from that city into the State of Texas, and into the States and Territories beyond that State, and that the inhabitants of those States and Territories and the citizens of New Orleans were engaged in interstate commerce; that the State of Texas had by its legislature, granted to the Governor and her health officials extensive powers in reference to quarantine against infectious or contagious diseases; that on the first day of March, 1899, the Governor of the State of Texas, issued a proclamation, establishing a quarantine on the Gulf coast; that there was a case of yellow fever reported in New Orleans, and that this case was made a pretext for the officers of the State of Texas to place an embargo on all commerce between the City of New Orleans and the State of Texas, and prohibited all common carriers entering the State of Texas, and from bringing into said State any freight or passengers, or even the mails of the United States coming from the City of New Orleans, and to enforce these orders, armed guards, acting under the authority of the State of Texas, were placed on all lines of travel from the State of Louisiana, into the State of Texas, with instructions to enforce the embargo *vi et armis*, which instructions were being carried out to the letter; that the complainant, while recognizing the right of the officials of the State of Texas to take prudent and reasonable measures to protect the people of said State from

infection, denied the right of the State of Texas to prohibit or so burden interstate commerce as to make such commerce impossible. After reciting the history of other quarantine occasions, when quarantine regulations were enforced, the complainant alleged that the effect of the present embargo by the State of Texas, upon the commerce of the City of New Orleans, was to build up and benefit the commerce of Galveston and other cities in the State of Texas, which were commercial rivals of the City of New Orleans, for the large commerce of the State of Texas and adjoining States and Territories; that the unreasonable, harsh, and discriminating character of the pretended quarantine, is nothing less than a commercial war declared against the State of Louisiana and her ports, cities and citizens, not for the *bona fide* purpose of protecting the health of the State of Texas, but for the purpose of increasing the trade and commerce of the State of Texas and of her ports, cities and citizens, to the great damage and injury of the State of Louisiana, and her citizens; that such embargoes on interstate commerce injure and impoverish the citizens of Louisiana, reduce the value of her taxable property, diminish her revenues, retard immigration, reduce the value of her public lands, and deprive her citizens of their rights and privileges as citizens of the United States.

There are many other averments in the bill of complaint in the Louisiana case, to which it is not necessary to refer at greater length. The bill concluded, in that case, with the prayer that a preliminary injunction be issued, prohibiting, enjoining and restraining the State of Texas and all her officers, agents, and employees, from establishing, maintaining and enforcing, under guise of a quarantine against yellow fever, any embargo of absolute prohibition upon interstate commerce between the State

of Louisiana or any part thereof and the State of Texas, etc., and that such injunction be made perpetual upon final hearing.

To the bill of complaint in that case the defendants interposed a demurrer, which demurrer is substantially the same in most respects, as that which Defendants have filed in the case at bar.

This Court sustained the demurrer in the Louisiana case, and dismissed the bill. The opinion in that case contained the following language to which we call the especial attention of the Court, as being applicable to the case at bar:

"But in order that a controversy between States, justiciable in this Court, can be held to exist, something more must be put forward than that the citizens of one State are injured by the maladministration of the laws of another. The States cannot make war, or enter into treaties, though they may, with consent of Congress, make compacts and agreements. When there is no agreement, whose breach might create it, a controversy between States does not arise unless the action complained of is State action, and acts of State officers in abuse or excess of their powers cannot be laid hold of as in themselves committing one State to a distinct collision with a sister State."

Reference is had to the entire opinion of the Court in the Louisiana case as sustaining the demurrer of defendants in the case at bar. In our opinion the Bill of Complaint in the Louisiana case presented much stronger grounds for invoking the original jurisdiction of this Court than are contained in the complaint in the case at bar. If this Court adheres to the doctrine announced in the Louisiana case, it must sustain the demurrer in this case.

THE STATE OF MISSOURI NOT A PARTY IN INTEREST.

The 2d, 3d, 4th, and 5th grounds for demurrer are to the effect that the State of Missouri is not a proper party

in interest in this case; that upon the face of the complaint the issue presented is between the State of Illinois and a corporation created by the State, and certain individuals, cities and towns in the State of Missouri; that the suit is attempted to be prosecuted in the name of the State of Missouri, which has in effect loaned its name to said cities and towns and individuals, and that the State is seeking redress for the supposed wrongs of such individuals, cities and towns, and that it does not appear upon the face of the bill that the property rights of the State as a State are involved in the suit, at least not to such an extent as to give this Court original equitable jurisdiction.

It is recited in the Bill of Complaint that if Defendants turn into the Des Plaines River the filth and sewage of the City of Chicago, that it will flow into the Mississippi River within the jurisdiction of Complainant, and that the waters of the said Mississippi River "will of a certainty be poisoned and polluted and rendered wholly unfit and unhealthy for domestic uses, and will render wholly valueless and entirely worthless the various waterworks systems of the towns and cities on the borders of the State of Missouri, and deprive its inhabitants of the right to the use of said River, for drinking and all other domestic, manufacturing and agricultural purposes." From this recital it appears that the injury threatened is, to the cities and towns on the borders of the State of Missouri, and their waterworks systems, and to the inhabitants on the banks of said Mississippi River, who use said waters for drinking and other domestic, manufacturing and agricultural purposes. It is true that the Bill of Complaint states that the State of Missouri will be deprived of its right to the waters of said river, for drinking and other purposes stated. But no fact is alleged which shows that the State of Missouri as a State uses water for drinking

or other domestic, manufacturing or agricultural purposes. The allegation is imperfect and insufficient to show that any injury will result to the State of Missouri as a State. The State does not drink water, the State does not carry on manufacturing or agricultural enterprises, nor does it use the water of the Mississippi River for any domestic purposes. This suit is therefore begun for no other purpose than the protection of the cities, towns and private individuals along the banks of the Mississippi River, in the territory of Complainant.

In the consolidated cases of the State of New Hampshire against the State of Louisiana and others, and the State of New York against the State of Louisiana and others, which were original suits brought in this Court (108 U. S. 76), it was held, "that Article IX of the amendments to the Constitution of the United States, prohibits the Supreme Court from entertaining jurisdiction of a cause in which one State seeks relief against another State on behalf of its citizens, in a matter in which the State prosecuting has no interest of its own, unless the State prosecuted consents thereto." And further, "that one State cannot create a controversy with another State within that term as used in the judicial clause of the Constitution." In these consolidated cases, it appeared that the States of New Hampshire and New York had each passed an act by their respective legislatures, to the effect that any citizens of the State holding a written obligation of another State to pay money which was past due and unpaid, might assign the claim to the State, and upon such assignment being made, the Attorney General was authorized to institute an original suit in the name of the State against the State which issued the written obligation, for the recovery of the money due upon the claim. In that case this Court by Mr. Chief Justice

Waite, stated as follows: "This State (N. Y.), as well as New Hampshire, is nothing more nor less than a mere collecting agent of the owners of the bonds and coupons, and while the suits are in the names of the State, they are under the actual control of individual citizens and are prosecuted, and carried on as though by and for them." The bill in each of those cases was dismissed. And in the case at bar, it may be said with equal force, the State of Missouri although the suit is in its name is acting merely as the agent of cities and towns and private individuals, to whom other courts than this as a court of original jurisdiction are open for the redress of whatever grievances they may have.

As was stated in the opinion of this Court by his honor, Mr. Chief Justice Fuller, in the case of the State of Louisiana *v.* The State of Texas *et al.*, handed down January 15th, at this term of court, referring to the bill in that case: "It is in this aspect that the bill before us is framed. Its gravamen is not a special and peculiar injury, such as would sustain an action by a private person, but the State of Louisiana presents herself in the attitude of *parens patriæ*, trustee, guardian, or representative of all her citizens." It is precisely in this attitude that the State of Missouri presents itself in the case at bar. In that case the demurrer was sustained and the bill dismissed.

See also, the recent case, *In Re* Hartung, 98 Wisconsin, 140; 73 N. W. 988.

Wheeling Bridge Case.

Among the cases cited by counsel for Complainant, in support of the motion for leave to file the Bill of Complaint in this case, is that of the State of Pennsylvania *v.* The Wheeling and Belmont Bridge Co., *et al.*, (13 How.

518). In that case, as counsel for Complainant contends, "this Court enjoined the building of a bridge over the Ohio River, fifty miles beyond the territory of the State of Pennsylvania, which was being constructed under color of the Statutes of Virginia." The opinion of this Court in that case does not sustain the contention of the Complainant in the case at bar. In that case the opinion was delivered by Mr. Justice McLean, and there were dissenting opinions by Chief Justice Taney and Mr. Justice Daniel. The opinion in that case states that it appears from the bill filed, that the State of Pennsylvania owned certain valuable public works, canals and railways, constructed at great expense, as channels of commerce, for the transportation of passengers and goods, from which a large revenue as tolls, was received by the State; that these works depended on the Ohio River, and were constructed with direct reference to its free navigation; that the goods and passengers transported on these lines were conveyed on steamboats on the Ohio River; and that the Wheeling bridge would so obstruct the navigation of the River as to divert trade and business from the public works of Pennsylvania, impair and diminish the tolls and revenues of the State, and render its improvements useless. The answer of the defendants in that case, admitted the State of Pennsylvania had expended large sums of money in construction of public improvements terminating at Pittsburg and Beaver; that a great amount of freight and a large number of passengers did pass over said works, and that a large amount of tolls to the State is derived therefrom; that the navigation of the Ohio River is important to the works above referred to; and that the value thereof would be affected injuriously, if from any cause the passage of steamboats from the City of Pittsburg downward were obstructed or impeded. The

court pointed out the public works which the State of Pennsylvania had erected, as follows:

"It appears that the State of Pennsylvania has constructed an open line of canal and railroad from Pittsburg and Alleghany City to the City of Philadelphia, a distance of about 400 miles, at an expense of about sixteen millions of dollars, all of which are owned by the State. There is also a railroad from Pittsburg to Harrisburg, which will soon be completed, at an expense of some eight or ten millions of dollars. There is also slack-water navigation from Pittsburg to Brownsville, and from Yaughegany to West Newton, and there are other lines of communication between Pittsburg and the East, which are owned in whole or in part by the State, and from which it derives revenue."

The Court held in that case, that, "The rights asserted and relief prayed, are considered as in no respect different from those of an individual. From the dignity of a State, the Constitution gives the right to bring an original suit in this Court, and this is the only privilege, if the right be established, which the State of Pennsylvania can claim in the present case." And the Court stated further in its opinion, referring to the State of Pennsylvania: "It asks from this Court the protection of its property, on the same ground and to the same extent as a corporation or individual may ask it." The Court found, as a matter of fact, from the evidence which was taken, that, "The bridge obstructs the navigation of the Ohio River, and that the State of Pennsylvania has been and will be, injured in her public works, in such manner as not only to authorize the bringing of this suit, but entitle her to the relief prayed."

The Court in the exercise of its equitable jurisdiction indicated that the obstruction of the navigation of the

River, may be remedied by elevating the bridge, and a modified decree was entered, permitting this to be done. The dissenting opinions of Chief Justice Taney and Mr. Justice Daniel, in this case are able and exhaustive. That of Chief Justice Taney, stated that the Ohio River was a public, navigable stream, and that Congress had undoubtedly the power to regulate commerce upon it; that Congress has the right to prohibit its obstruction or to declare any such obstruction a public nuisance; to direct the mode of proceeding in the courts of the United States to remove it, etc., but the Chief Justice stated that this power had not been exercised; that there is no law of the United States declaring an obstruction in the Ohio River, or any other navigable river to be a public nuisance, and directing it to be abated as such. This Court, however, in its opinion held, that the Ohio River is a navigable stream, of which fact all courts will take cognizance, and that for many years the commerce upon it has been regulated by Congress, by establishing ports, requiring vessels which navigate it, to take out licenses, and to observe certain rules for the safety of passengers and cargoes; and that appropriations by Congress have been frequently made to remove obstructions from its channel. These facts taken in connection with the direct interest of Pennsylvania, were considered sufficient to confer original jurisdiction upon this Court.

The case at bar is in no respect comparable to the Wheeling bridge case. In that case the property of the State of Pennsylvania, which was involved, amounted to over twenty-five millions of dollars, and a positive injury to this property was not only alleged, but admitted. In the case at bar, there is no allegation that the Complainant in this case, the State of Missouri, has any property belonging to the State, which will be injured or damaged

by the apprehended pollution of the waters of the Mississippi River. Nor does it appear that Congress has ever passed any law declaring the pollution of a navigable stream to be a nuisance. Such laws have always been regarded as being within the exclusive police powers of the States, except in the District of Columbia and in the Territories of the United States, over which Congress has complete jurisdiction. Mr. Justice Daniel, in his dissenting opinion in the Wheeling bridge case, said: "There then, can be no nuisance, with respect to the United States, except what Congress shall, in the exercise of some constitutional power, declare to be such; and Congress have not declared an act like that here complained of to be a nuisance." "Believing," Mr. Justice Daniel, stated, "that the question of nuisance or no nuisance, is intrinsically a question of fact, which, when contested, ought to be tried at law, upon the circumstances of each case, and that, before the ascertainment of that fact, a court of equity cannot take cognizance, either for enjoining or abating an act alleged or not proven to be a nuisance," he was of the opinion that the bill of complaint in that case should be dismissed.

In the case of the Willamette Iron Bridge Company *v.* Hatch, 125 U. S., p. 1, this Court held: "There must be a direct Statute of the United States, in order to bring within the scope of its laws, obstructions and nuisances in navigable streams within a State; such obstructions and nuisances being offences against the laws of the States, within which the navigable waters lie, but no offence against the United States in the absence of a Statute." That case came to this Court on appeal from the circuit court of the United States for the District of Oregon. This Court was of opinion that an original suit in that case was not a suit arising under any law of the

United States, and since on such ground alone the court below could have had jurisdiction of it, it followed that the decree of the court below must be reversed and the suit dismissed. It is true that the Willamette River was wholly within the State of Oregon, and Congress having passed no law in reference to obstruction of a navigable stream within a State, this Court held that a United States court did not have jurisdiction of the case, as no law of Congress was involved. In the case at bar, the alleged threatened pollution of a navigable stream, relates to a river which is the boundary line between the States of Illinois and Missouri. There is no allegation that the navigation of the Mississippi River will be obstructed by the threatened acts of Defendants, and the allegation as to the pollution of the stream, is that the waters where the pollution will take place are wholly within the State of Missouri, as far as the center of the channel.

NOT A DIRECT ISSUE BETWEEN TWO STATES.

In the case of the State of Pennsylvania *v.* Wheeling Bridge Co., *supra*, there were as above stated, two dissenting opinions, one by Chief Justice Taney, the other by Mr. Justice Daniel. The Chief Justice, in his dissenting opinion said: "The bridge has been erected and completed without any previous injunction to restrain respondents from proceeding in the cause. It is charged to be a public nuisance. But Pennsylvania has no right to proceed against it wholly on that account. She proceeds and is entitled to proceed only for a private and particular injury to her property, which this public nuisance has occasioned." Mr. Justice Daniel, in his dissenting opinion, page 596, said: "I conclude therefore, that to constitute a State a party in that sense which brings her

within the meaning of the Constitution, and indeed within the import of the term, party to a cause, by all correct legal intendment there must be averred and proved on her behalf, a certain and direct interest, or an injury, or a right of property—a perfect right—a right which a court of justice can define, adjudge, and enforce; and that on the part of the State of Pennsylvania no such right having been averred even, much less established in proof, nothing is shown which can maintain the jurisdiction of this Court in this cause. The shadowy pretext of an interest or injury, from the nature of things not susceptible of calculation or estimate, can never be the foundation of a right, legal or equitable."

These two dissenting opinions do not, to the extent we have quoted them, assert a principle contrary to that laid down by this Court, for it is stated in the opinion of this Court in the case of Wisconsin *v.* Pelican Ins. Co., 125 U. S. 295, that all the judges who took part in the decision in the Wheeling bridge case, treated the suit as brought to protect the property of the State of Pennsylvania.

Mr. Justice McLean, delivering the opinion of the Court, said that Pennsylvania asks from this Court the protection of its property on the same ground and to the same extent as a corporation or individual may ask it. It was stated in the opinion of the Court, that the bridge over the Ohio River, was constructed under a Statute of Virginia, in violation of a compact of the State of Virginia with the State of Kentucky, and that the compact was confirmed by the Act of Congress, providing for the admission of Kentucky into the Union as a State. But the Court treated the case as one brought to protect the property of the State of Pennsylvania. In this connection we beg pardon for again referring to the case of the State of Louisiana against the State of Texas, decided at this term of court. In the

opinion, handed down by his honor, the Chief Justice, in that case, it is stated as follows: "In the absence of agreement it may be that a controversy might arise between two States for the determination of which the original jurisdiction of this Court could be invoked, but there must be a direct issue between them, and the subject-matter must be susceptible of judicial solution. But it is difficult to conceive of a direct issue between two States in respect to a matter where no effort at accommodation has been made; nor can it be conceded that it is within the judicial function to inquire into the motives of a State legislature in passing a law, or of the Chief Magistrate of a State in enforcing it in the exercise of his discretion and judgment. Public policy forbids the imputation of their official action to any other than legitimate motives."

Upon a careful examination of the Bill of Complaint in the case at bar, it will be difficult to ascertain that a direct issue between two States is presented. Nor will it be conceded that it is within the judicial function of this Court to inquire into the motives of the legislature of the State of Illinois in passing the law under which the Sanitary District of Chicago was created, or of the Chief Magistrate in enforcing that law in the exercise of his discretion and judgment. The State of Illinois and the officers of the Sanitary District of Chicago, acting under the authority of the State in a matter which is conducive to the health of the people, ought not to be enjoined or restrained by this Court in the exercise of their lawful authority.

The Bill of Complaint does not show that any direct issue between the State of Missouri and the State of Illinois has been alleged, which entitles the Complainant to invoke the original jurisdiction of this Court.

No Special Injury Alleged.

In the case of the State of South Carolina *v.* The State of Georgia *et al.* (93 U. S. p. 4), the Complainant filed a bill in equity in this Court, praying an injunction restraining the State of Georgia, Alonzo Taft, Secretary of War, and the Engineer officers of the Army, and their agents, from obstructing or interrupting the navigation of the Savannah River, in violation of the compact entered into between the States of South Carolina and Georgia, on the 24th day of April, 1787. The Secretary of War was making certain improvements in the channel of the Savannah River, in pursuance of appropriations by Congress, and the State of South Carolina endeavored to enjoin the making of these improvements, on the ground that they obstructed or interrupted the navigation of the Savannah River. This Court held that the defendants were acting within the authority of acts of Congress, and that no illegal obstruction existed. The opinion states as follows: "The plaintiff has therefore made no case sufficient to justify an injunction, even if the State is in a position to ask for it. But in resting our judgment upon these grounds, we are not to be understood as admitting that the State, when suing in this Court for the prevention of a nuisance in a navigable river of the United States, must not aver and show that it will sustain some special and peculiar injury therefrom, such as would enable a private person to maintain a similar action in another court. Upon that subject we express no opinion. It is sufficient for the present case, to hold, as we do, that the acts of the defendants, of which South Carolina complains, are not unlawful, and consequently there is no nuisance against which an injunction should be granted."

The special injunction theretofore ordered was dissolved and the bill was dismissed.

The point upon which no opinion was expressed, is so stated as to permit the inference that a State when suing in this Court for the prevention of a nuisance in a navigable river of the United States, must aver and show that it will sustain some special and peculiar injury therefrom, such as would enable a private person to maintain a similar action in another court. Subsequent opinions of this Court support this inference. There are no averments in the Bill of Complaint in the case at bar, which show that the State of Missouri will sustain any special and peculiar injury on account of the threatened action of Defendants. The allegation in the complaint is, that the State of Missouri and its inhabitants will be deprived of the right to the use of the waters of the said Mississippi River, for drinking and other domestic, manufacturing and agricultural purposes, and that the health and the lives of the inhabitants of the State of Missouri will be endangered and the business interests of said State will be greatly and irreparably injured. This allegation is a mere conclusion of law and not a statement of facts, upon which this Court might conclude that such might be the result of the acts complained of.

COMPLAINANT NOT ENTITLED TO EQUITABLE RELIEF.

If this Court should hold that it has original jurisdiction of the case at bar, the allegations in the Bill of Complaint are not sufficient to entitle the State of Missouri to the equitable relief prayed for, in said Bill of Complaint.

In support of this position, counsel for Defendants call the attention of this Court to their brief filed herein, in support of their objections to the granting of a preliminary or temporary injunction in this case.

It will not be contended in this case that the mere fact of the drainage of the City of Chicago into the Des Plaines River is a nuisance, *per se*, to the cities and towns and inhabitants of the State of Missouri, below the mouth of the Illinois River, a distance of over three hundred miles. Such drainage may or may not become a nuisance to the inhabitants, cities and towns of Missouri, according to circumstances; and the injury apprehended by Complainant is merely eventual or contingent; and no injury whatever may in fact be inflicted upon the cities, towns and inhabitants of the Complainant.

The acts of the Sanitary District of Chicago have all been done and performed in pursuance of law as alleged in the Bill of Complaint. It is a general rule that where the act complained of is not a nuisance, *per se*, or may or may not become so, according to circumstances, and the injury apprehended is eventual or contingent, equity will not interfere. The presumption is, that a person entering into a legitimate business, will conduct the same in a proper way, so that it will not constitute a nuisance. (See, Ramsey *v.* Riddle, 1 Cranch, (C. C.) 399; Spooner *v.* McConnell, 1. McLean (U. S.) 337; Laughlin *v.* Lamasco City, 6 Ind. 223; Hahn *v.* Thornberry, 7 Bush. (Ky.) 403; Pfingst *v.* Senn. 94 Ky. 556; Green *v.* Lake, 54 Miss. 540; Butler *v.* Rogers, 9 N. J. Eq. 487; Ross *v.* Butler, 19 N. J. Eq. 294; Cleveland *v.* Citizens Gaslight Co., 20 N. J. Eq. 201; Rochester *v.* Curtis, Clarke Cht. (N. Y.) 336; Stillwell *v.* Buffalo Riding Acd., 21 Abb. (N. Y. S. Ct. 472) N. Cas.; Ellison *v.* Washington, 5 Jones Eq. (N. C.) 57.)

In Ripon *v.* Hobart, 3 Myl. & K. 177, Lord Chancellor Brougham, said that, "no instance can be produced of interposition by injunction, in case of an eventual or contingent nuisance."

In Hough *v.* Doylestown Borough, 4 Brews. (Pa.) 333, it was held that in order for equity to enjoin a private nuisance, the danger must be impending or imminent and the fact certain, not resting on hypothesis or conjecture, but established by conclusive evidence. If the injury be doubtful, eventual or contingent, or if the matter complained of is not, *per se*, a nuisance, an injunction will not be granted. In cases of prospective nuisances, a court of equity will not interfere, unless the damage to be apprehended will be serious, nor when upon balancing the inconveniences or injuries, greater injury will be inflicted by granting than by refusing an injunction."

WHEN ORIGINAL JURISDICTION CANNOT BE INVOKED.

As stated heretofore, the mere fact that a State is a party to a suit as plaintiff or complainant and another State is defendant, does not present a case for the original jurisdiction of this Court. In the case of the State of Mississippi *v.* Johnson, 4 Wall. 476, a bill was filed by the State of Mississippi against Andrew Johnson, President of the United States, seeking to restrain him from enforcing certain acts of Congress. This Court refused to entertain the case because the Court had no jurisdiction of the bill to enjoin the President in the performance of his official duties.

In the case of the State of Georgia against Staunton, Secretary of War, and General Grant and others, a similar decision was made in a similar case. This Court held, that the case presented a political and not a judicial question, and that it had no jurisdiction over the subject-matter presented in the bill.

In the case of the State of Wisconsin *v.* Pelican Ins. Co., *supra*, this Court held, that a State could not bring

an original suit in the Supreme Court against the citizens of another State, for the recovery of a penalty imposed by the laws of a State.

In the consolidated cases of New Hampshire *v.* Louisiana, and New York *v.* Louisiana, *supra*, this Court held, that one State cannot create a controversy with another State within the meaning of the term as used in the judicial clause of the Constitution, by assuming the prosecution of debts owing by another State to its citizens.

This Court has not original jurisdiction in a case in which one State may bring a suit against another or against citizens of another State, unless the complaining State shall aver and prove a certain and direct interest or injury or a right of property which a court of justice can define, adjudge and enforce.

When Original Jurisdiction Can Be Invoked.

In the case of the State of Texas *v.* White *et al.*, 7 Wall. 700, this Court took original jurisdiction on the ground that Texas was at that time (during the reconstruction period), a State and entitled to sue in the Supreme Court as such.

In the case of the State of Florida *v.* Anderson *et al.*, 91 U. S., p. 667, this Court took original jurisdiction on the ground that, that State had a statutory lien on the bonds of certain railroads and that it was competent for the State, in order to protect that interest, to obtain equitable relief in this Court against citizens of another State.

Title to the Bed of the Mississippi River.

Counsel for Complainant in this case contend that by reason of the fact that the title to the bed of the Missis-

sippi River to the middle of the main channel, is in that State, and that by reason of the fact that the State of Missouri has jurisdiction to the middle of the channel, that it is therefore within the power of the State, "to protect these waters from pollution, in order to preserve the health of her citizens, and to protect the soil of the bed of the stream from having large deposits of sewage, filth and noxious matters drained from the City of Chicago and deposited upon the bed of the stream, to the detriment both of the bed of the stream and the waters thereof."

It is alleged in the Bill of Complaint that great quantities of the sewage of the Sanitary District of Chicago will be daily carried through the artificial channel, constructed by Defendants and sent through the Des Plaines and Illinois Rivers and into the Mississippi River, and that great quantities thereof will be deposited in the bed and soil of said river, belonging to the State of Missouri, and wholly within the jurisdiction thereof, to the great and irreparable damage of the State of Missouri, and that the sewage and filth about to be injected into said waters and into the portion thereof over which the State of Missouri has jurisdiction, and from which thousands of her inhabitants obtain drinking water, will be deposited in the bed of said river, and that the waters thereof will be polluted and poisoned to such an extent as to render them unwholesome and unhealthy for use for drinking by said inhabitants in the territory of Complainant, and unfit for use for watering stock and for manufacturing purposes. The allegation is that this sewage so turned into the waters of the Mississippi River will be to the great and irreparable damage of Complainant. The injury alleged, is to the inhabitants of the State of Missouri. There is no allegation setting forth facts from which this Court

could infer that great and irreparable damage would be done to the State of Missouri as a State. The specific allegations of damage are to the individual inhabitants, and cities and towns and waterworks systems which these cities and towns have erected. The State of Missouri is merely lending its name to private individuals and municipalities in the State. The State has no direct, special, or peculiar interest to be protected. A State cannot create a controversy with another State, or with the citizens of another State, so as to entitle it to invoke the original jurisdiction of this Court, by assuming the prosecution of suits for the benefit of its individual citizens. (N. H. *v.* La., and N. Y. *v.* La., 108 U. S. p. 91.)

The attention of this Court is called to the fact that the allegations in the Bill of Complaint are in reference to threatened injury only. There is no allegation that any injury has been suffered by the State or by the inhabitants, or by the cities and towns in the State of Missouri, or that any noxious matter has been deposited in the bed of the Mississippi River. The allegations of prospective injury are merely expressions of opinion. In the case of Thebaut *v.* Canova, 11 Fla. 143, the Supreme Court of Florida, in a similar case, held, as follows: "Where the bill for an injunction alleged that a steam-mill, if put into operation, would unavoidably and in itself become a nuisance, this allegation was held to be nothing but the expression of an opinion by the plaintiff, upon which the Court could not retain the injunction, but should leave the parties to their remedy at law."

Remedy for a Nuisance.

The proper and usual remedy for a nuisance, which is purely local in its character, is by indictment, brought on

behalf of the public by the proper officer. (See 14 Encyc. of P. & P. p. 1093, and cases therein cited, in the States of Arkansas, California, Delaware, Illinois, Iowa, Kentucky, Maine, Massachusetts, New Jersey, New York, South Carolina, and Virginia.)

However, it is considered that in proper cases, equity will take jurisdiction of suits to suppress public nuisances, and actions at law for damages occasioned by nuisances may be prosecuted. Cases of this latter class are designated as trespasses on the case. The injuries complained of are not called trespasses, but have the general name of torts, wrongs, or grievances. In action on the case, in general, the general issue is, "not guilty," and it is pleaded by stating that the defendant comes and defends the wrong and injury, when, etc., and says that he is not guilty of the premises above laid to his charge."

The nuisance alleged in this case is an offence against the laws of the State of Missouri. If there be no statute of that State upon the subject, it would be a common-law offence in that State, punishable in the local courts. A nuisance is not an offence against any law of the United States. There is no federal law making a nuisance a crime, and the federal Government has no jurisdiction of offences at common law. (United States *v.* Lancaster, 2 McLain (U. S.) 431.) The United States can exercise no criminal jurisdiction which is not given by statute, nor punish any act criminally, except as the statutes provide, *ib.* The federal courts have no common law criminal jurisdiction. (See Encyc. of American and English Law, 2d Ed. 289, and numerous authorities therein cited in Note 6.)

The case of Wisconsin *v.* Pelican Ins. Co., *supra*, was an action brought upon a judgment recovered by the State of Wisconsin in one of her own courts, against the Peli-

can Ins. Co., a Louisiana corporation, for penalties imposed by the statutes of Wisconsin, for not making returns to the Insurance Commissioner of the State, as required by that statute. This Court held that that case was not a civil controversy; that the statute under which it arose was in the strictest sense penal, imposing a penalty upon any insurance company doing business in the State of Wisconsin, without having deposited with the proper officer of the State a full statement of its property and business during the previous year. The cause of action, as stated by this Court, was not a private injury, but solely an offence against the State, by violating her laws. The prosecution was in the name of the State, and the penalty would accrue to the State and to the Insurance Commissioner. This Court in its opinion in that case said: "The real nature of the case is not affected by the forms provided by the law of the State for the punishment of the offence. It is immaterial whether imposed by indictment or by action; or whether, under that law, a judgment there obtained for the penalty might be enforced by execution, by *scire facias*, or by a new suit. In whatever form the State pursues her right to punish the offence against her sovereignty, every step of the proceeding tends to one end, compelling the offender to pay a pecuniary fine by way of punishment for the offence. * * * If this Court has original jurisdiction of the present case, it must follow that any action upon a judgment obtained by a State in her own courts against a citizen of another State, for the recovery of any sum of money, however small, by way of a fine for any offence, however petty, against her laws, could be brought in the first instance in the Supreme Court of the United States. That cannot have been the intention of the Convention in framing, or of the people in adopting, he Federal Constitution."

In the case at bar, the form of the action is a suit in equity to enjoin the wrongs and injuries which it is alleged will be inflicted upon the Complainant by Defendants. The acts complained of are criminal in their nature, and as stated by this Court in the Wisconsin case, it is immaterial whether the prosecution is by indictment or by an action, civil in form. In whatever form the State pursues, the object is to compel the offender to pay a pecuniary fine by way of punishment for the offence, or as in the case at bar, to enjoin the Defendants from committing the wrongs and injuries against the State of Missouri, which if committed would be in violation of the laws of the State. If this suit were an action at law to recover damages for wrongs and injuries actually done and suffered by reason of the alleged nuisance, the Plaintiff's right to recover would depend upon the fact as to whether the acts complained of and proven, were in violation of the criminal statutes of the State. The proceeding in whatever form it may be instituted, for the suppression or abatement of a public nuisance, is essentially criminal in its character. It is in no sense a civil controversy, and under the rule laid down in the Wisconsin case, this Court has not original jurisdiction in such a case.

If this Court has original jurisdiction of the case at bar, it would follow that any State of the Union might invoke the original jurisdiction of this Court in all cases wherein it could be alleged that citizens of or corporations created by another State were committing or threatening to commit any nuisance by pollution of the waters of navigable streams in the State, by the erection of manufacturing establishments or otherwise. If a syndicate outside of Missouri should purchase the breweries in St. Louis, or the slaughter houses at Kansas City, and should discharge the drainage therefrom into the Mississippi or Missouri

Rivers, the State of Missouri might invoke the original jurisdiction of this Court to restrain the nuisance created thereby, if it can maintain the case case at bar. As was stated by this Court in the Wisconsin case, that cannot have been the intention of the Convention in framing, or of the people in adopting, the Federal Constitution. Such an enlargement of the original jurisdiction of this Court would invite a multiplicity of suits in this Court, such as was never contemplated by those who framed the Federal Constitution.

The distinction between civil controversies and criminal actions is not well defined. Mr. Bishop, in his work on Criminal Law, says: "Whenever the public deems that an act of wrong to individuals is of such a nature as to require the public protection to be cast over the individual, with respect to the act, it makes the act punishable by the public; or in other words, it makes it a crime." (1 Bishop, Cr. Law, Secs. 532, 533, 2d Ed.) Acts may be both crimes and torts. If torts only, the individual may obtain redress for damages sustained. If crimes, the individual may obtain redress for the injury, and the act may be punished as a crime. If the act may be punished as a crime, it is essentially criminal, and this character attaches to it, in whatever form it may be redressed or punished.

The nuisances alleged in the Complaint as threatened by Defendants, are criminal in their character, and it is their criminal character only that entitles the State to suppress them. The right of the State to appear in the case at bar, is based upon the criminal act with which the public are threatened. If it were not a public wrong, the State could not appear, and if it be a public wrong, it is a criminal proceeding, which cannot be prosecuted in this Court. If the acts were torts, the individuals injured would alone have the right to maintain an action, and

they could not sue in this Court. Hence it appears that the only ground upon which the State can stand, in this case, is that a public wrong, which is a crime, is threatened. And standing upon that ground, the original jurisdiction of this Court cannot be invoked, for the purpose of suppressing the wrong or for preventing the alleged threatened nuisance.

The case of the State *v.* Patterson *et al.*, decided in the Court of Civil Appeals in the State of Texas, was on a bill of equity by the State of Texas against Patterson and others, to abate by injunction the keeping of a public gambling house. The Court of Civil Appeals held, in that case: "It is not shown that any property or civil rights of the public, which it is the duty of the State to protect, are invaded, or that any irreparable injury will be done to any such rights by the maintenance of such nuisance. The case presented is a criminal one pure and simple, in which the criminal law furnishes the only remedy which the courts are required to enforce." 37 S. W. Rep'r, p. 479.

WANT OF PROPER PARTIES.

In the case of the State of California *v.* Southern Pacific R.R. Co. 157 U. S., pp. 229 to 271, this Court held, that original jurisdiction in the Supreme Court could not be exercised if there were other parties in interest, who were not made parties, and who if they were made parties, would oust the court of its original jurisdiction. In the case at bar, it appears upon the face of the Bill of Complaint that there are other parties in interest in this case, namely, cities and towns and individuals in the State of Missouri, whose property will be injured by the threatened acts of Defendants. But if such other parties were

made parties plaintiff, the plaintiffs could not maintain an original suit in this Court. Hence if the parties in real interest should be made parties, the original jurisdiction of this Court would be ousted.

A Case Without a Precedent.

The cases in which the original jurisdiction of this Court have been invoked heretofore by a State for the purpose of enjoining or restraining nuisances, are very few in number. The Wheeling Bridge case, *supra*, is one of such cases and the case of South Carolina *v.* Georgia, 93 U. S. p. 4, is another. In the latter case the State of South Carolina sought to enjoin the obstruction of the navigation of the Savannah River. The case of Wisconsin *v.* Duluth, 96 U. S. 381, was for the purpose of enjoining the obstruction and diversion of the St. Louis River from its natural course. In these three cases above mentioned, the nuisance alleged was that interstate commerce would be interfered with or prevented.

The case at bar is without precedent. No case has heretofore been brought originally in this Court by a State against another State or against citizens of another State, in which the complainant sought to restrain by injunction a nuisance resulting from the pollution of the waters of a navigable stream. That kind of a nuisance has heretofore been left to the determination of the local courts. If this Court should entertain jurisdiction of this case, it will be the first of its kind which has appeared in this Court, after more than one hundred years of its existence; and it will open up a new and extensive field of litigation in this Court.

Cases Cited by Counsel for Complainant.

Among the cases cited by counsel for Complainant in support of their contention that this Court has original jurisdiction in the case at bar, is the case of the Cherokee Nation *v.* State of Georgia (5 Pet. p. 1). The Cherokee Nation, claiming to be a foreign State, brought an original suit in the Supreme Court of the United States, at the January term, 1831, against the State of Georgia. In this case the Cherokee Nation prayed for an injunction to restrain the State of Georgia from the forcible exercise of legislative power over neighboring people, and from enforcing certain laws of that State. The opinion was delivered by Chief Justice Marshall, three of the Judges of the Court dissenting, and one other concurring in the opinion of the Court in dismissing the bill, but upon other grounds than those cited in the opinion. Counsel for Complainant were unfortunate in citing this case in support of their contention. In the opinion of the Court, Chief Justice Marshall, said: "The bill requires us to control the legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the court may be well questioned. It savours too much of the exercise of political power, to be within the proper province of the judicial department. But the opinion on the point respecting parties, makes it unnecessary to decide this question. If it was true, that the Cherokee Nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted, and that greater wrongs are to be apprehended, this is not the tribunal which can redress the past or prevent the future. The motion for an injunction is denied."

This Court in determining the question raised by the Bill of Complaint in the case at bar, may, with equal force, hold, in the language of Chief Justice Marshall in the Cherokee case, that the propriety of controlling the legislature of Illinois, by an injunction may be well questioned, and that if it be true that the State of Missouri has rights, this Court is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted upon the State and that still greater wrongs are to be apprehended, this is not the tribunal which can redress the past or prevent the future. The motion for an injunction in this case should be denied, as in the Cherokee case.

Another federal case cited by counsel for Complainant in support of their contentions in this case, is that of the State of Rhode Island *v.* The State of Massachusetts, 12 Peters, 657. In that case this Court held, as follows:

"The Supreme Court has jurisdiction of the bill filed by the State of Rhode Island against the State of Massachusetts to ascertain and establish the northern boundary between the States, that the rights of sovereignty and jurisdiction be restored and confirmed to the plaintiff; and that they be quieted in the enjoyment thereof and their title." There has never been any question raised in this Court as to its original jurisdiction in cases affecting the boundary between two States.

Another case cited by counsel for Complainant in support of their contentions in this case, is that of the Mayor, etc., of Georgetown, against the Alexandria Canal Co. *et al*, 12 Pet. 91. This case was begun in the circuit court of the United States for the County of Washington in the District of Columbia, and was brought to this Court on appeal. It was not a case in which the original jurisdiction of this Court was invoked. This Court held, in that case, as follows: "The Potomac River is a navigable

stream, or part of the *jus publicum ;* and any obstruction of its navigation would, upon the most established principles, be a public nuisance. A public nuisance being the subject of criminal jurisdiction, the ordinary and regular proceeding at law is by indictment or information, by which the nuisance may be abated, and the person who causes it may be punished. A court of equity may take jurisdiction in cases of public nuisance, by an information filed by the Attorney General. If any particular individual shall have sustained special damage from the erection of it, he may maintain a private action for such special damage ; because to that extent he has suffered beyond his portion of injury, in common with the community at large. While it is admitted by all that the jurisdiction of a court of equity, in cases of nuisance, is confessedly one of delicacy, and accordingly the instances of its exercise are rare ; yet it may be exercised in those cases in which there is imminent danger of irreparable mischief, before the tardiness of the law could reach it."

That case having been brought in an inferior court, cannot be cited as authority for invoking the original jurisdiction of this Court in the case at bar. It may be stated, however, that under certain conditions and circumstances, a court of equity having jurisdiction will interpose to prevent imminent or irreparable mischief. The bill of complaint in that case was to the effect, that the plaintiffs were deeply interested in the trade and navigation of the Potomac River, and it alleged that the defendants were engaged in constructing an aqueduct over that river. The plaintiffs expressed fears that the work would injure the harbor of the town and the channel of the river. It prayed a preliminary injunction against the defendants and against the progress of the work so conducted. The answer of defendants denied the right of

the appellants to sue and the jurisdiction of the court to enjoin for a public nuisance; and to give the relief prayed; and denied that there was any injury or damage. There were many other questions raised in the complaint and in the answer. The court below refused to grant the injunction and the relief prayed, and dismissed the bill. This Court affirmed the decree of the court below. We are unable to see wherein that case supports the contention of the Complainant in the case at bar. If the principle announced by the Court in that case should be applied to the case at bar, this Court would hold that the ordinary and regular proceeding in reference to a public nuisance, is by indictment or information, by which the nuisance may be abated and the persons who cause it may be punished. That a court of equity having jurisdiction of the parties and the subject-matter, may take jurisdiction in cases of public nuisance, by information filed by the Attorney General. This, of course, would be in the local courts where the nuisance was alleged to exist. The individual citizens of the State of Missouri, who may have sustained special damages from the alleged nuisance, may maintain a private action for such special damages; but under no circumstances can the doctrine laid down by the Supreme Court in that case be made applicable to the case at bar.

Counsel for Complainant cite the case of Wisconsin *v.* Duluth. This case was brought originally in the Supreme Court. That suit was brought by the State of Wisconsin, on the ground that the channel of the St. Louis River, as it flowed in its natural course, was the boundary between that State and the State of Minnesota, and that State has an interest in the continuance of the channel as an important highway for navigation and commerce in its natural and usual course. That a certain canal cut

by the City of Duluth was deeper than the natural outlet of the St. Louis River at its mouth, and had diverted and will divert the current of that river through Superior Bay. This Court held in that case, that, where Congress has in the exercise of its lawful authority, inaugurated and adopted a system of improvements of a harbor, and is, by appropriating the public monies, carrying it out, this Court has no authority to prescribe the manner in which the work shall be conducted, or to forbid its completion, or to require the undoing of that which has been done. This Court accordingly held that the State of Wisconsin was not entitled to the relief prayed for in her bill, and that it must therefore be dismissed with costs, and it was so ordered. Again we fail to see wherein that case supports the contention of counsel for the Complainant in the case at bar. It is true that this Court took jurisdiction in that case and heard it upon its merits, upon the allegation contained in the complaint, that the boundary line between the State of Wisconsin and the State of Minnesota was being changed by the channel which was being cut by the City of Duluth. The Court therefore had jurisdiction to determine whether the boundary line of the State was being changed.

Another case cited by counsel for Complainant, in support of their contentions in this case, is that of the Mayor of New Orleans against the United States, 10 Peters, 662. This case was brought in the district court for the Eastern District of Louisiana by petition of the United States, in which an injunction was prayed against the Mayor, to restrain him and the aldermen and inhabitants of New Orleans from invading the rightful domain and possessions of the United States in certain lands lying between certain streets and a public road in the City of New Orleans. An injunction was ordered and an appeal was

prayed to the Supreme Court. The opinion of the Court was delivered by Mr. Justice McLean, in which he stated as follows: "The Government of the United States, as was well observed in the argument, is one of limited powers. It can exercise authority over no subjects, except those which have been delegated to it. Congress cannot by legislation, enlarge the federal jurisdiction, nor can it be enlarged under the treaty-making power." It was held by the Court, that, "no jurisdiction of the Federal Government, either for purposes of police or otherwise, can be exercised over this public ground which is not common to the United States. It belongs to the local authorities to enforce the trust and prevent what they shall deem a violation of it by the city authorities," that, "neither the fee of the land in controversy, nor the right to regulate the use, is vested in the Federal Government."

The decree of the District Court was reversed and the case remanded. We are unable to see wherein this case supports in any manner the contentions of counsel for Complainant in the case at bar.

Another federal case cited by counsel for Complainant in support of their contention, is that of the State of Georgia *v.* Brailsford *et al.* (2 Dall. 400). In this case the State of Georgia brought an original suit in this Court for the purpose of recovering certain debts due by citizens of Georgia to British subjects, which had been confiscated by virtue of acts of the legislature of Georgia, passed during the Revolutionary War. All the Justices of the Supreme Court delivered opinions in the case on the question of granting the injunction. Chief Justice Jay, in his opinion, said: "Then the only point to be considered, is whether, under these circumstances, it is not equitable to stay the money in the hands of the Marshal, until the right to it is fairly decided; and so avoid the risk of put-

ting the true owner to a suit for the purpose of recovering it back? For the time being, I think the money should remain in the custody of the law, until the law has adjudged to whom it belongs; and therefore I am content that an injunction issue." A preliminary injunction was issued.

At the February term of the Court, 1793, upon the motion to dissolve that injunction, this Court held that if the State of Georgia had a title in the debt (upon which no opinion was then expressed), she had an adequate remedy at law, by action upon the bond; but in order that the money might be kept for the party to whom it belonged, ordered the injunction to be continued to the next term; and, if Georgia should not then have instituted her action at common law, to be dissolved (2 Dall. 415). Such an action was brought accordingly and was tried by a jury at the bar of this Court, at the February term, 1794, when the Court was of the opinion, and so charged the jury, that the act of the State of Georgia, did not vest the title in the debt in the State at the time of passing it, and that by the terms of the act the debt was not confiscated, but only sequestered, and the right of the obligees to recover it revived on the Treaty of Peace; and the jury returned a verdict for the defendants, 3 Dall., 1, 2, and 3. (See Wisconsin *v.* Pelican Ins. Co., 127 U. S. p. 295.)

The law case was tried by a jury upon an amicable issue, to ascertain whether the debt in controversy belonged to the State of Georgia, or to the original creditors. The trial at law upon the merits, is reported in 3 Dal. pp. 1, 2, 3 and 4.

In the report of the proceedings of the law case, it is stated that the argument continued for four days, when the Chief Justice delivered his charge to the jury. Under the

instructions of the Court, upon the law of the case, the jury returned a verdict for the defendants. This Court took original jurisdiction, both in the equity and the law case, upon the ground that it was a suit between a State and citizens of a foreign State. The State of Georgia failed in the equity case, because it had a remedy at law, and it failed in the law case because it failed to show a right to recover, the title not having vested in the State. And the Complainant in this case should fail, for the reason that by its Bill of Complaint, it does not state facts which entitle it to obtain equitable relief.

Misjoinder of Plaintiffs.

Where the wrong complained of is one in which the State has no direct interest, any more than it has in any ordinary controversy between individuals, the State is not a proper party plaintiff, and the suit should be instituted by the particular individuals who will be injured. (10 Encyc. P. & P. pp. 903, 904, and numerous authorities therein cited in Note 1.)

It is conceded that the parties plaintiff other than the State of Missouri may be joined, where they have a joint interest in the subject-matter of the action. (Ballou *v.* Hopkinton, 4 Gray (Mass.) 324.

In Conclusion.

Counsel for Defendants submit with confidence to this Honorable Court, that the authorities herein cited establish beyond controversy the following propositions:

First: That this Court has not original jurisdiction, in this case, either of the subject-matter or of the parties.

Second: That the facts alleged in the Bill of Complaint

do not show that there is a controversy between the State of Missouri and the State of Illinois and the Sanitary District of Chicago, which entitles the Complainant to invoke the original jurisdiction of this Court.

Third: That upon the face of the Bill of Complaint it appears that the real party in interest, is not the State of Missouri as a State, but certain cities, towns, and individuals in that State.

Fourth: That if the real parties in interest were made parties plaintiff, the jurisdiction of this Court would thereby be ousted.

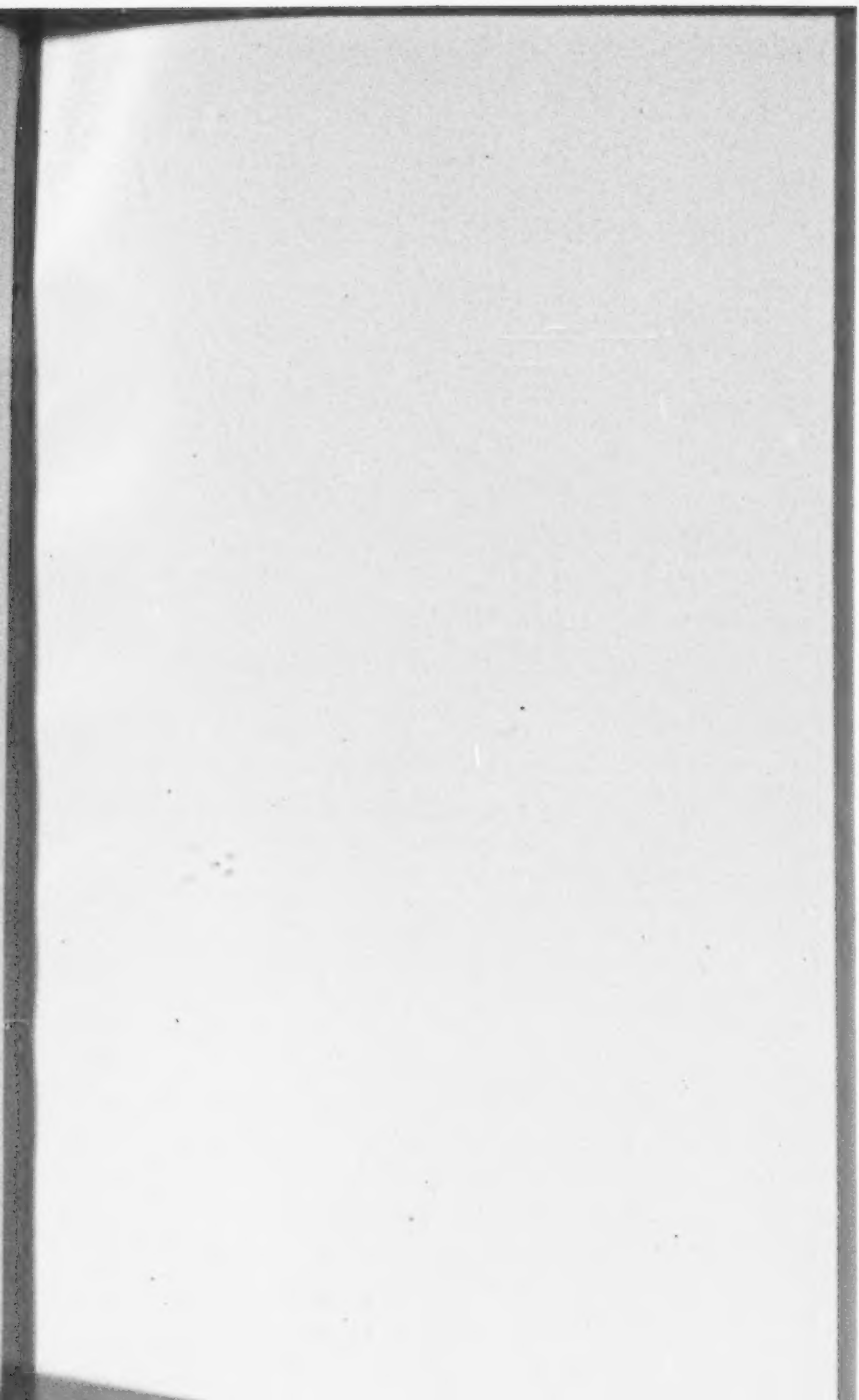
Fifth: That the Bill of Complaint does not state facts sufficient in law for the State of Missouri to maintain its action against the Defendants, or to entitle Complainant to the equitable relief prayed for therein.

Counsel for Defendants, therefore, insist that their demurrer to the Bill of Complaint should be sustained and that the case should be dismissed.

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No. 7 Orig.
Def. of Akin & Springer for C.
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FILED
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JAMES H. McKENNEY,

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1899.

Filed April 9, 1900.

No. 7, Original.

The State of Missouri,

COMPLAINANT,

vs.

The State of Illinois and the Sanitary District of Chicago,

DEFENDANTS.

Brief and Argument of Edward C. Akin, the Attorney-General of the State of Illinois, and of the Attorneys of the Sanitary District of Chicago, in Support of Objections on the Part of said Defendants, to the Granting of a Preliminary or Temporary Injunction in said Cause.

EDWARD C. AKIN,
Attorney-General of the State of Illinois.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

NUMBER 7, ORIGINAL.

THE STATE OF MISSOURI, COMPLAINANT,

v.

THE STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, DEFENDANTS.

Brief and Argument of Edward C. Akin, the Attorney General of the State of Illinois, and of the Attorneys of the Sanitary District of Chicago, in Support of Objections on the part of said Defendants, to the Granting of a Preliminary or Temporary Injunction in said Cause.

NOTICE OF APPLICATION FOR A PRELIMINARY INJUNCTION.

The Defendants, in the above entitled cause, have been notified that application would be made to this Honorable Court, on Monday, April 2, 1900, for a preliminary or temporary injunction against them, their officers, agents, servants, and employees, to restrain and enjoin them, and each of them, from receiving or permitting any sewage to be received or discharged into the artificial channel or drain described and referred to in the Bill of Complaint,

and constructed by the Defendants, the Sanitary District of Chicago, and from permitting said sewage to flow, or cause the same to be made to flow through said channel or drain towards or into the Des Plaines River, or from doing, causing, or permitting to be done any of the acts or things which are complained of in said Bill of Complaint.

In view of the notice given by Complainant, that a preliminary or temporary injunction would be applied for on the return day of this cause, the Defendants, not waiving their demurrer, filed herein, but wholly relying thereon, have filed separate answers, and caused the same to be verified, in which answers the Defendants specifically deny all the facts and circumstances upon which the equity of the Bill of Complaint is founded, and in which they deny that the fears and apprehensions of injury to Complainant are well founded. Said answers also contain new matter which shows conclusively in the opinion of Defendants that the Complainant is not entitled to any equitable relief whatever.

The Defendants, therefore, earnestly object to the granting of said application for a preliminary or temporary injunction; and in support of their objections thereto, they submit to this Honorable Court, this their brief and argument, in which said objections and the reasons therefor will be specifically stated, and supported by ample authorities.

The Facts.

The Bill of Complaint of the State of Missouri in this case, recites, briefly stated, the following facts as the basis of its right to equitable relief by injunction at the hands of this Honorable Court.

That on the banks and shores of the Mississippi River,

below the mouth of the Illinois River, are many cities and towns in the said State of Missouri, and many thousands of persons who rely on the Mississippi River for their daily necessary *supply of water for drinking*, and *all* other purposes; that said waters are indispensable to the life, health and business of many thousands of the inhabitants in the said State of Missouri; that the cities and towns below the mouth of the Illinois River have built and constructed waterworks, which derive their supply of water from said Mississippi River; that the State of Illinois passed a law in 1889, known as the Sanitary District Act, under which the Sanitary District of Chicago, one of the Defendants herein, was organized, and that said corporation has constructed a channel or drain from the Chicago River in the City of Chicago, to a point near Lockport in the County of Will in said State, where said channel connects with and empties into the Des Plaines River, which empties into the Illinois River and which latter River empties into the Mississippi River at a point about forty-three miles above the City of St. Louis in the State of Missouri. That these Defendants now propose and threaten to receive into said channel or drain the sewage matter and filth of the Sanitary District of Chicago, and have in part effectuated this threat and purpose, and threaten to permit and to cause said sewage and filth to flow through the channel or drain toward and into said Des Plaines River, and eventually into the Mississippi River; that if Defendants should be permitted to carry their said threats into execution, and should cause said sewage and other noxious and poisonous matters which would otherwise flow into Lake Michigan, to flow into the Mississippi River, that the waters of the Mississippi River within the jurisdiction of the State of Missouri will of a certainty be poisoned and polluted and rendered

wholly unfit for drinking and other domestic purposes, and will render wholly valueless the various waterworks systems of the cities and towns on the borders of the said State of Missouri, and deprive its inhabitants of the right to the use of the water of the said river, for drinking and other purposes, as said water has been used heretofore; that said threatened action of the Defendants will amount to a direct and continuing nuisance to the State of Missouri and its inhabitants; and that unless restrained by the order of this Court, the Defendants will, in accordance with the terms of the act under which said Sanitary District is organized, upon the permit of the Governor of the said State of Illinois, turn said water and sewage aforesaid into the Des Plaines River, thence into the Mississippi River. The Bill of Complaint closes with prayer for subpœna and for injunction, restraining and enjoining the Defendants from permitting or causing any of said sewage to flow into said channel or drain, and prays also for a provisional or temporary injunction pending this cause, restraining and enjoining the several acts aforesaid. The Bill of Complaint also alleges that before any water or sewage shall be admitted into any channel constructed under the act creating the Sanitary District of Chicago, the trustees thereof shall notify the Governor of the State of Illinois of the completion of said channel, and the Governor shall appoint three commissioners to examine said canal or channel and report to the Governor whether the same complies with the act of the State of Illinois; and if it does the Governor shall authorize the water and sewage to be turned into said channel, and that without said permit it cannot be so turned in. And in the Complainant's prayer for injunction, there is a special prayer that the State of Illinois be enjoined and restrained from issuing to its co-

defendant permission and authority to do and perform the acts aforesaid, or to allow them to be done.

The Bill of Complaint also avers that by the general provisions of said act, said channel is at all times subject to the control and supervision of the State of Illinois and of its authorities.

It will be seen from this brief recital of the allegations contained in the Bill of Complaint, that it does not allege that any nuisance exists, or that any damage has been done by the Defendants to the Complainant, or to any of the cities and towns or inhabitants in the State of Missouri. The allegations of the Bill are to the effect, that the Defendants threaten to do certain things, which if done would produce the injury, annoyance or nuisance of which complaint is made.

THE SEPARATE ANSWER OF THE STATE OF ILLINOIS.

The State of Illinois submits its separate answer by its Attorney General, in which it unites with its co-defendant, in the formal admissions, and denials as to the Bill of Complaint made by the said Sanitary District of Chicago, in its separate answer, and further makes the specific allegation, that prior to the time when the Complainant presented to this Honorable Court its motion for leave to file its Bill of Complaint, herein, the Governor of the State of Illinois had appointed the three commissioners mentioned in Complainant's bill; that they had made their report as required by law; that they had found that the channel had been substantially completed, and that the Governor had issued his permission and authority to the Board of Trustees of the said Sanitary District, to turn into said channel the water and sewage of said Sanitary District of Chicago. And in the separate answer

of the Sanitary District of Chicago, it is alleged that said water and sewage were turned into said channel and into the Des Plaines and Illinois Rivers, in pursuance of the permission and authority given by the Governor of said State of Illinois. The answer of the State of Illinois admits the allegation contained in the Bill of Complaint to the effect that by the general provisions of the act of the State of Illinois, under which the said Sanitary District of Chicago was created, the said channel or canal was at all times to be subject to the control and supervision of the State of Illinois and of its authorities; but the said State of Illinois avers that said control and supervision can only be exerted through and by the law-making power of said State, and that the only authorities of said State, who have any such control and supervision over said channel or canal, are the Board of Trustees of the said Sanitary District of Chicago, their officers, agents and employees.

In view of the fact that the only acts required to be done by the Governor of the State of Illinois in reference to said canal or channel, were done and performed by him prior to the institution of this suit, and in view of the further fact, that the control and supervision of the State of Illinois, other than that imposed by law upon the Sanitary District of Chicago, can only be exercised by the law-making power of said State, which power cannot be controlled by injunction or other process issuing out of this Court, the State of Illinois submits to this Honorable Court whether said Bill of Complaint should not now be dismissed as to it.

The Separate Answer of the Sanitary District of Chicago.

The separate answer of the Sanitary District of Chicago is quite voluminous, and counsel will not attempt to recite in this brief a complete synopsis of its provisions. The attention of the Court is earnestly requested to its specific denials of all the facts and circumstances set forth in Complainant's Bill, as the grounds for equitable relief and for an injunction in this case. This separate answer specifically denies that the Complainant's fears and apprehensions of injury are well founded.

And said answer admits not alone that the Sanitary District of Chicago has about completed said drainage channel, but states that it has completed the same, and that it has received into said channel the sewage and filth of the said Sanitary District of Chicago, which carries nearly the entire sewage of the said City of Chicago and a portion of that of the County of Cook, and that it has caused said sewage and filth to flow through said channel or drain towards and into the Des Plaines River. But said Defendant denies that said sewage and filth will be carried into said Mississippi River, or that it will pass by the homes of the inhabitants of the said State of Missouri, or of the cities and towns and their waterworks within said State of Missouri. This Defendant, the Sanitary District of Chicago, in its said answer, further denies that it is true, as stated in said Bill of Complaint, that the said City of Chicago has been discharging its sewage matter and filth into the Chicago River, and into Lake Michigan, in such large quantities that much of it has accumulated upon the bed and along the sides of said river, and upon the bed of the said lake, and upon the shores thereof, and it ex-

pressly denies that the plan adopted and put into operation by this Defendant will loosen said filth so alleged to be deposited upon the bed of said lake and upon the sides of said river, and cause it to flow toward and into the said Des Plaines River; but on the contrary, this Defendant says, that for many years a large portion of the sewage matter arising in said drainage district has been turned into the Chicago River, and has been pumped into the Illinois and Michigan Canal heretofore constructed, and has flowed into the Des Plaines River. But Defendant expressly denies that if it shall carry its plan into execution and shall carry all the sewage, filth and noxious matters arising in said Sanitary District into the waters of the Des Plaines River, through the drainage channel, constructed by this Defendant, that the waters of the Mississippi River will of a certainty, or at all, be poisoned or polluted thereby, as alleged in said Bill of Complaint, and it expressly denies that the carrying out of its plans will destroy the flow and adaptability of the waters of the Mississippi River along the territory of Complainant, for domestic or other uses. And this Defendant expressly denies that such use of said channel will render valueless the waterworks systems of the cities and towns located in the State of Complainant, and that it will injure or destroy the business of said cities and towns, or that it will establish or create as to them a direct and continuing nuisance with the result in the said Bill described, or any injurious results, and it expressly denies that any damage will result to the said cities and towns or inhabitants of Complainant by the carrying out of the plans of this Defendant. And this Defendant further denies that said filth and sewage or any part thereof will be deposited in the bed or soil of the Mississippi River, within the jurisdiction of Complainant; and this Defendant denies that the filth and

sewage of the said Sanitary District of Chicago will pollute and poison the waters of the said Mississippi River to such an extent as to render such waters unwholesome, unfit, and unhealthy for drinking and other domestic uses, by the inhabitants in the territory of Complainant, or unfit for watering stock or for manufacturing purposes, or that it will poison or pollute the waters of the said Mississippi River with the germs of diseases of any kind, or that it will cause a continuing nuisance in the Mississippi River, to the detriment of the State of Missouri, or to the injury of the lives and health of the citizens or inhabitants of said State. But on the contrary, this Defendant expressly avers that the turning into the Des Plaines River of the sewage of the Sanitary District of Chicago, together with 300,000 cubic feet per minute, of the pure water of Lake Michigan, which will accompany the same, will greatly improve the quality of the waters of the Illinois and Mississippi Rivers, and also greatly improve the conditions which existed prior to the 17th day of January last, the time when said sewage and water were turned into said Illinois and Des Plaines Rivers.

The separate answer of this Defendant expressly denies that its acts and doings in Complainant's Bill mentioned, have been without legal authority, but on the contrary, it is averred that each and every of its acts have been in strict pursuance of the authority given it by the State of Illinois.

The separate answer of this Defendant recites the history of the construction of the said canal or channel, by means of which the waters of Lake Michigan have been turned into the Des Plaines and Illinois Rivers, and shows that the work of constructing said channel or canal was begun in 1891, and that all of the acts of said corporation have been open and notorious, and during the

whole of the nine years since the institution of the work upon this great enterprise, this Defendant, the Sanitary District of Chicago, has expended upon said work, more than thirty-three million dollars, and the said State of Missouri had notice of the premises, and of the great work and of the great expenditures, which this Defendant alleges were the expenditure of public monies raised by taxation and by the sale of bonds; and having such notice, as aforesaid, and not having heretofore instituted any proceedings in the courts of the country, it has been guilty of laches and has slept upon its rights, if any it ever had, and is now estopped to urge its cause.

This Defendant, the Sanitary District of Chicago, in its separate answer, filed herein, alleges that the distance by way of the drainage channel, from Robey street, Chicago, to the mouth of the Illinois River is 322 miles; that this River and its tributaries embrace an area of twenty-five thousand square miles, and that it furnishes the natural drainage system for a country thickly populated, occupied by not less than a million and a half of people, outside of the Sanitary District of Chicago, and that the various sewage of this great population of these great cities, is received into the Illinois River, above its junction with the Mississippi River; and that in addition thereto, as stated in its separate answer, the sewage of the Sanitary District of Chicago has been discharged into said Des Plaines and Illinois Rivers for the last thirty years, and from thence into the Mississippi River.

The separate answer of this Defendant further states that in addition to the sewage and drainage carried into the Illinois River and from thence into the Mississippi River, is the sewage and drainage of a vast territory tributary to the Mississippi and Missouri Rivers; that this territory so drained, is substantially all of the land of

the United States between its northern border and a central line running east and west through the State of Kansas, prolonged eastward through the State of Missouri, and from the Rocky Mountains on the west to a line running from northeast to southwest, through the State of Illinois from the City of Chicago to the City of St. Louis, and that in addition thereto the western half of the State of Wisconsin and the western two-thirds of the State of Minnesota. That the population of this region so drained into the Mississippi River is in the neighborhood of fifteen million people. That an uncounted number of cities and towns with populations ranging from two thousand to two hundred and fifty thousand, are situated upon the banks of said Mississippi and Missouri Rivers and their tributaries, and discharge their sewage therein. The answer mentions among these cities, Minneapolis and St. Paul, Omaha, Des Moines, Dubuque, Keokuk, Quincy, Kansas City, and many others, which are named in said answer, and attached to said answer are exhibits, giving the names and location of these cities and towns with their populations, according to the census of 1890. In the answer of this Defendant it is shown that the said Mississippi River and the said Missouri River and their tributaries above the cities and towns in the State of Complainant mentioned in said Bill, constitute the natural and uncontrollable drainage of this whole region, this whole vast population, and this whole system of industries, and that said cities and towns use the said system for their sewage, from their location downward. The answer of this Defendant shows that the additional amount of sewage which will be discharged by the channel or canal, constructed by the Sanitary District of Chicago, is but trifling in amount as compared to the enormous volume of sewage received into said Mississippi River, above the

City of St. Louis and the other cities and towns in State of Complainant, mentioned in said Bill.

The said separate answer of this Defendant calls attention to the fact that by the natural law relating to sewage and drainage, and running water in large bodies, the said sewage, instead of contributing harmful elements, is relieved of all its deleterious qualities by processes of vaporization, attrition, lodgment, absorption, chemical conversion and bacteriologic changes, so that in the end the water purifies itself.

And further the said separate answer of this Defendant alleges that in pursuance of the act incorporating it, it is removing from its sewage all of the solid material and is diluting all the liquid by the addition thereto of twenty cubic feet of water drawn from Lake Michigan, to every cubic foot of sewage. Wherefore, said Defendant by its separate answer avers that it will not, in and by the operation of its system, contaminate, pollute or destroy the water supply, from the said Mississippi River and its tributaries, of the inhabitants, cities and towns in the State of Complainant, as alleged in and by said Bill declared.

The attention of the Court in this case is especially called to the fact, that both the separate answers of the State of Illinois and of the Sanitary District of Chicago, have been verified by the oaths of the Governor of the State of Illinois and of a member of the Board of Trustees of the Sanitary District of Chicago. Notwithstanding the fact that the Bill of Complaint expressly waives an answer under oath, yet Defendants have verified their answers in order that they may be regarded by the Court, on the application for temporary injunction, as affidavits, thus complying with the amendment to the forty-first equity rule of this Court.

Having briefly recited the material allegations in the Bill of Complaint, and the answers filed herein, the Defendants submit their Objections to the granting of a preliminary or temporary injunction in this cause, and the authorities in support thereof.

OBJECTIONS.

First. It appears upon the face of the Bill of Complaint that this Court has not original jurisdiction of this cause.

In support of this objection, the Defendants call attention of this Court to their demurrer filed herein and to their brief and argument in support thereof.

If a preliminary injunction should be granted by this Honorable Court, and it should hereafter appear by your judgment on Defendants' demurrer that this Court had no jurisdiction, either of the parties or of the subject-matter of this cause, any order of the Court theretofore issued would be a nullity, and the officers of this Court executing such orders would not be protected thereby. Hence we contend, when the question of jurisdiction is raised upon the face of the pleadings, that that question takes priority of consideration over all others, including priority over the consideration of the motion or application for a preliminary injunction.

Second. It appears upon the face of the Bill of Complaint, filed herein, that the Complainant is not entitled to an injunction, either temporary or permanent, against Defendants in this cause.

It is recited in the Bill of Complaint that if Defendants turn into the Des Plaines River the filth and sewage of the City of Chicago, that it will flow into the Mississippi River

within the jurisdiction of Complainant, and that the waters of the said Mississippi River "will of a certainty be poisoned and polluted, and rendered wholly unfit and unhealthy for domestic uses, and will render wholly valueless and entirely worthless the various waterworks systems of the towns and cities on the borders of the State of Missouri, and deprive its inhabitants of the right to the use of said river for drinking and all other domestic, manufacturing and agricultural purposes." From this recital it appears that the injury threatened is to the cities and towns on the borders of the State of Missouri and their waterworks systems, and to the inhabitants on the banks of said Mississippi River, who use said waters for drinking and other domestic, manufacturing and agricultural purposes. It is true that the Bill of Complaint states that the State of Missouri will be deprived of its right to the waters of said river for drinking and other purposes stated. But no fact is alleged which shows that the State of Missouri as a State uses water for drinking or other domestic, manufacturing or agricultural purposes. The allegation is imperfect and insufficient to show that any injury will result to the State of Missouri as a State. The State does not drink water, the State does not carry on manufacturing or agricultural enterprises, nor does it use the water of the Mississippi River for any domestic purpose. This suit is therefore begun for no other purpose than the protection of the cities, towns and private individuals along the banks of the Mississippi River, in the territory of Complainant.

In the consolidated cases of the State of New Hampshire against the State of Louisiana and others, and the State of New York against the State of Louisiana and others, which were original suits brought in this Court (108 U. S., 76), it was held "that Article 9 of the Amend-

ments to the Constitution of the United States, prohibits the Supreme Court from entertaining jurisdiction of a cause in which one State seeks relief against another State on behalf of its citizens, in a matter in which the State prosecuting has no interest of its own, unless the State prosecuted consents thereto." And further, "that one State cannot create a controversy with another State, within that term as used in the judicial clause of the Constitution." In these consolidated cases, it appeared that the States of New Hampshire and New York had each passed an act by their respective legislatures, to the effect that any citizen of the State holding a written obligation of another State to pay money which was past due and unpaid, might assign the claim to the State, and upon such assignment being made, the Attorney General was authorized to institute an original suit in the name of the State against the State which issued the written obligation, for the recovery of the money due upon the claim. In that case this Court by Mr. Chief Justice Waite, stated as follows: "This State (N. Y.) as well as New Hampshire is nothing more nor less than a mere collecting agent of the owners of the bonds and coupons, and while the suits are in the names of the State, they are under the actual control of individual citizens and are prosecuted and carried on by and for them." The bill in each of those cases was dismissed. And in the case at bar, it may be said with equal force, the State of Missouri although the suit is in its name is acting merely as the agent of cities and towns and private individuals, to whom other Courts than this as a court of original jurisdiction are open for the redress of whatever grievances they may have.

As was stated in the opinion of this Court by his honor Mr. Chief Justice Fuller, in the case of the State of

Louisiana *v.* The State of Texas *et al.*, handed down January 15, at this term of Court, referring to the bill in that case: "It is in this aspect that the bill before us is framed. Its gravamen is not a special and peculiar injury, such as would sustain an action by a private person, but the State of Louisiana presents herself in the attitude of *parens patriæ*, trustee, guardian, or representative of all her citizens." It is precisely in this attitude that the State of Missouri presents itself in the case at bar. In that case the demurrer was sustained and the bill dismissed.

See also the recent case *In Re* Hartung, 98 Wisc. 140; 73 N. W. 988.

See also the case of State *v.* Patterson *et al.* (Court of Civil Appeals of Texas, October, 1896), wherein it was held: "Where the State, through its proper officer, seeks the jurisdiction of a Court of equity to abate, by injunction, a public nuisance, it must show that such nuisance is an injury to the property or civil rights of the public at large, which it is his duty, as the agent of the public, to present." (37 S. W. Rep'r, 478.)

Third. Defendants object to the granting of a temporary injunction in this case upon the ground that the Complainant's right thereto has not been previously established in a proper tribunal and is in doubt; and upon the further ground that the Defendants dispute the right of the Complainant and deny that any injury whatever will result to Complainant or to any of the cities and towns or inhabitants in the State of Missouri by reason of the acts complained of in the Bill of Complaint.

In England from a very early day the rule has obtained that a court of equity will not entertain jurisdiction of a suit to enjoin a nuisance, waste, trespass, or violation of

franchises, or like injuries, where the complainant's right has not been previously established in the proper tribunal, or is in doubt, and the defendant disputes the right of the complainant, or denies the fact of its violation; and that under such circumstances the court will ordinarily do nothing more than preserve the property in its present condition, if that be necessary, until the question of right can be established at law. In support of this doctrine the Encyclopedia of Pleading and Practice, Vol. 10, p. 887, cites the leading English cases on this subject; and also the leading text-books of this country; and numerous decisions in the States of Alabama, Connecticut, Delaware, Florida, Illinois, Maine, Maryland, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Utah, Vermont, Virginia, and the following cases in the United States courts: Irwin *v.* Dixion, 9 How. (U. S.) p. 10; Fitzpatrick *v.* Childs, 2 Brews. (Pa.), 365; Potter *v.* Whitney, 1 Lowell (U. S.) 87; Zinsser *v.* Cooledge, 17 Fed. Rep., 538.

In the case of Rouse *v.* Martin, 75 Ala., 510, the Supreme Court of Alabama held that, "where the thing sought to be prohibited is not unavoidably noxious in itself, the court will generally refuse to interfere until the matter has been tried at law;" citing Rosser *v.* Randolph, 7 Port. (Ala.) 238.

In the case of Thebaut *v.* Canova, 11 Fla., 143, it was declared that the court will be slow to interfere in case of doubtful right.

In the case of Dunning *v.* Aurora, 40 Ill., 481, Walker, Chief Justice of the Supreme Court of the State of Illinois, said: "A court of equity will, under some circumstances, grant an injunction to restrain the erection of a nuisance, but with great caution. This is always so where

there is a remedy at law, until the right has been established by a verdict. And a court will always act with reluctance in abating a nuisance, and seldom, if ever, until it has been regularly found to be such by a jury."

In the Citizens Coach Co. *v.* Camden Horse R.R. Co., 29 N. J., Eq., 299, the court declared: "No rule of equity is better settled than the doctrine that a complainant is not in a position to ask for a preliminary injunction when the right on which he founds his claims is, as matter of law, unsettled," citing numerous adjudicated cases in the State of New Jersey.

In the case of Rochester *v.* Curtiss, 1 Clarke Ch. Reps. (N. Y.) 336, Vice Chancellor Whittlesey, said:

"In cases of doubtful right, or remote and contingent injury, this Court will wait for the right to be settled at law, or the injury to become imminent before it will interfere with its extraordinary process of injunction."

In the case of Sanderlin *v.* Baxter, 76 Va., 299, the Supreme Court of Virginia held that ordinarily where the existence of a nuisance is controverted, complainant will be required first to establish his right at law.

In the case of Burnham *v.* Kempton, 44 N. H., 79, the Supreme Court of New Hampshire held:

"Ordinarily, courts of equity will exercise a concurrent jurisdiction with courts of law in cases of private nuisances only when they can restrain irreparable mischief, suppress interminable litigation or prevent a multiplicity of suits; and in such cases, courts of equity will not ordinarily take upon themselves to decide the fact that a nuisance exists, when that fact is controverted, but will require that the party asking the interference of the Court, shall first establish his right at law."

In the case of Eastman *et ux v.* Amoskeag Manufac-

turing Co., 47 N. H., 71, the Supreme Court of New Hampshire, all the judges concurring, held:

"A court of equity will not undertake to decide whether a nuisance exists, until the plaintiff shall fully establish his rights at law. * * * To justify the interference of a court of equity in their issue of a writ of injunction, the plaintiff must show by other proof, a case of strong and clear injustice, of pressing necessity, imminent danger, of great and irreparable damage, and not of that nature, for which an action at law, would furnish an adequate remedy."

Counsel for Defendants concede that if the facts alleged in a complaint show clearly that irreparable injury may be wrought and the allegations of the answer do not satisfactorily controvert such facts, a Court having jurisdiction will take cognizance, and if the circumstances require it direct a trial by jury, in the meantime restraining Defendant by injunction. But such a course is pursued only where the facts are not denied and where it clearly appears from the pleadings that irreparable injury will result, if the temporary injunction is refused.

Fourth. The Defendants object to the granting of a preliminary injunction in this case for the reason that in their answers, filed herein, they deny under oath all the equities of the Bill of Complaint.

The general rule upon this subject is that, where the answer under oath denies the equities of the bill, a preliminary or temporary injunction will be refused. (See Vol. 10, Enc. of Pleading and Practice, p. 1000, and numerous cases cited in Note 2, in support of this doctrine.) The authorities cited embrace cases in the States of California, Florida, Georgia, Iowa, Kansas, Maryland, Nevada, New Jersey, New York, Oregon, Pennsylvania, and numerous others in the United States Courts.

In California, in the case of Gagliardo *v.* Crippen, 22 Cal., 362, the Supreme Court of that State held, "that the application should be denied where the allegations of the complainant are fully and specifically controverted by the defendant's affidavit."

In Georgia, the Supreme Court held, "where the equity of the bill is sworn off by the answer, and the denials of the answer are not overcome by proof, injunction should be refused." Citing Flash *v.* Long, 67 Ga., 767; Spence *v.* Steadman, 49 Ga. 133; Kenan *v.* Johnson, 48 Ga. 28.

In New York, in the Supreme Court, in the case of Decker *v.* Decker, 52 How. Pr. 218, it was said: "It is an elementary principle that where the whole equity of the complaint is denied, an injunction will not be granted," citing American Grocers Pub. Asso. *v.* Grocers Pub. Co., 51 How. Pr. (N. Y. S. Ct.) 402; Finegan *v.* Lee, 18 How. Pr. (N. Y. S. Ct.) 187; and numerous other cases in that State.

In the case of Perkins *v.* Warren, 6 How. Pr. (N. Y. S. Ct.) 341, it was held:

"An application under the code, for an injunction *pendente lite*, should be denied, where the defendant denies under oath the facts upon which the plaintiff relies in his affidavit."

In the case of Clum *v.* Brewer, 2 Curt. (U. S.) 506, the Circuit Court of the United States held, "that the mere denial of the equity of the bill does not prevent the court from looking into the law and the facts of the case, where special injunction is moved for, and granting or refusing it according to its discretion;" citing Poor *v.* Carleton, 3 Sumn. (U. S.) 70. But in the case of Shoemaker *v.* National Mechanics Bank, 2 Abb. (U S.) 416 it was held: "As a general rule, however, where the answer denies all

the circumstances upon which the equity of the bill is founded, the court will refuse a preliminary injunction." Citing Leo. *v.* U. P. R. R. Co., 17 Fed. Rep. 273; Flint *v.* Russell, 5 Dill. (U. S.) 151; Batten *v.* Silliman, 3 Wall. Jr. (C. C), 124; Goodyear *v.* Day, 2 Wall. Jr. (C. C.) 283.

In the case of Rogers *v.* Danforth, 9 N. J., Eq. 289, the Supreme Court of New Jersey held, "Where the answer denies that the plaintiff's apprehensions of injury are well founded, the court will, as a general rule, give to the defendant the full benefit of such denial and refuse an injunction."

Fifth. Defendants further object to the granting of a preliminary or temporary injunction in this case, for the reason that there is no allegation that any nuisance actually exists; and that the allegation of apprehension of a nuisance is not well founded.

In the case of Stillwell *v.* Buffalo Riding Academy, 21 Abbott's New Cases, the New York Supreme Court for the 8th District held: "That the doctrine that an injunction may issue to prevent an apprehended nuisance prior to its actual disturbing existence, is applicable only where it is apprehended that the proposed use of the property will actually result in a nuisance." In that case the court reviewed the cases in which injunctions had been granted, and stated that in this latter class of cases, where injunction had been granted, the court assumed, as a necessary result of maintaining the establishments, that they would be nuisances, in such cases an injunction may be issued and maintained to restrain that use of the property, prior to the commencement of its use, citing McKeon *v.* See, 51 N. Y., 300; Adams *v.* Popham, 76 Id., 410. The Court concluded its review of this class of cases as follows:

"But this rule has never been carried so far as to restrain the future use of a building for the purposes of a stable, even where a large number of horses may be intended to be kept and maintained, without some well grounded evidence that it will turn out to be a nuisance and disturbance to the occupants of neighboring property.

"This was examined upon an appeal in chancery in the case of Luscombe *v.* Steer, 17 Law Times (N. S.) 229, where it was held as to the business of brickmaking and brick-burning, which could not under the circumstances be determined necessarily to result in a nuisance, that an injunction could not be issued or maintained prior to such use of the property as would in and of itself constitute a nuisance. Nothing has yet transpired in any way producing disturbance or annoyance to the occupants of the plaintiff's property. And from the affidavits which have been produced on behalf of the defendant it is probable that the building may be used, as it is designed it shall be, by the Defendant, without producing annoyance or disturbance to any of these occupants. And as long as that probability exists, and in the absence of any annoyance or disturbance having yet taken place, the case upon this branch of it is not one for an injunction. If an injunction is to be issued and maintained, that can only be done as to an occupancy of the description proposed by the Defendant, when it shall be found and be capable of being proved as a matter of fact, that such use has become a nuisance, or source of discomfort and disturbance to the occupants of this or other property."

As in that case so with the case at bar, nothing has yet transpired in any way producing nuisances to the cities and towns or inhabitants of the State of Missouri, or injury to their property, and from the allegations in the answers of Defendants, it is probable that the uses to which the proposed canal will be put, will not produce any nuisance or injury to the inhabitants or cities and towns in State of Complainant. And as long as that probability exists and in the absence of any nuisance or

annoyance having taken place, the case at bar is not one for injunction.

In the case of Cleveland *v.* The Citizens Gaslight Co., 20 N. J. Eq. Reps. 201, a preliminary injunction was applied for, pending the litigation. The court stated that a preliminary injunction was not absolutely necessary; that the cause could be brought to a hearing before the works would be completed or in operation; and full proof can be given on both sides, of the effect of such works. The court stated that if on final hearing the facts should be established as contended by Complainant, an injunction would be granted, but the preliminary injunction was refused in view of the conflicting testimony. A portion only of the prayer for relief was granted.

In the case of Butler *v.* Rogers, 9 Stockton's Ch. Rps. (N. J.), 487, it was held:

"As a general rule a court ought not to interfere in case of nuisance, where the injury apprehended is of a character to justify conflicting opinions whether the injury in fact will ever be realized."

In the case at bar as in that case, opinions are conflicting. The Complainant alleges that injury will result. The answers which are entitled to equal force, allege that no injury whatever will result to Complainant in this case.

In the case of Hahn *v.* Thornberry, 7 Bush. (Ky.) 403, it was held that the Chancellor will not interfere by injunction when the nuisance sought to be restrained is eventual or contingent, nor when the evidence is conflicting and the injury to the public, or individual complaining, doubtful.

In the case of Green *v.* Lake, 54 Miss. 540, the Supreme Court of Mississippi, held:

"To restrain by injunction the use of property by the owner, on the allegation that such use will be an annoyance and injury to the property of another, is a very delicate branch of chancery jurisdiction * * *. Generally a court of equity will refuse until the complainant has established at law the existence of the nuisance, and will not act if his right is controverted or not clear * * *. To obtain relief in equity for a private nuisance, the threatened injury must be irreparable, incapable of compensation in damages, and not doubtful or contingent."

In the case of Ross *v.* Butler, 19 N. J. Eq. Reps., 294, it was held that equity will not interfere against a nuisance that is only contingent.

In the case of Pfingst *et al. v.* Senn, 94 Ky. Reps. 556, the Court of Appeals of Kentucky, held that "injunction against a threatened nuisance will not be granted when the thing complained of is not *per se*, a nuisance, but may or may not become so, according to circumstances, or when it is uncertain, indefinite or contingent or productive of only possible injury." In that case the court cited numerous authorities in support of the doctrine announced, concluding as follows:

"Injunctions against threatened nuisances will seldom be granted except in extreme cases where the threatened use of property is clearly shown to be such as leaves no doubt of its injurious results."

The Court of Appeals of Kentucky in that case quoted with approval the language of Lord Brougham in the case of the Earl of Ripon *v.* Hobart, 1 Cooper Cases Ch. 33, as follows:

"If the thing sought to be prohibited is in itself a nuisance, the court will interpose to stop the irreparable mischief without waiting for the result of a trial. But

when the thing sought to be restrained is not inevitably in itself a nuisance, but only something which may, according to circumstances, prove so, then the court will refuse to interfere * * *. It is also very material to observe that no instance can be produced of the interposition by injunction, in the case of what we have been regarding as an eventual or contingent nuisance."

See also High on Injunctions, Sec. 743.

In the case of Bowen *v.* Mauzy, 117 Ind. Reps., the Supreme Court of Indiana, held:

"In order that a person may be restrained by injunction from commencing the operation of a business, when it is legitimate, it must appear that the defendant threatens and intends to conduct the business in a manner which will constitute a nuisance."

And further that court held in that case:

"If such facts are not shown as to make it appear affirmatively that he intends to conduct the business in a manner so that it will constitute a nuisance, it will be presumed that he will conduct the business properly and so that it will not interfere with the rights of others. The courts of equity will not interfere by injunction, under the rule of law we have cited."

In the case of Ellison *v.* Connor, 5 N. C. Reports, p. 57, the Supreme Court of North Carolina, held:

"It is settled in respect to private nuisances, that where a nuisance apprehended is dubious or contingent, equity will not interfere, but will leave the complainant to his remedy at law. See Drury on Injunction, 242; Barnes *v.* Calhoun, 2 Ire. Eq. 199; The Attorney General *v.* Lewis, 3 Ire. Eq. 205, and Simpson *v.* Justice, 8 Ire. Eq. 115."

In the case of Flint *v.* Russell, (5 Dill. C. C. Reps. 151), Dillon, Circuit Judge, held as follows:

"Where the facts stated in the complaint, showing that the erection and the use of a livery stable would be a nuisance, to the adjoining property, were denied by the answer, preliminary injunction to restrain the erection of a building to be used as a livery stable would be refused."

The learned Judge in that case quoted with approval the doctrine laid down by Lord Chancellor Brougham, in the case of the Earl of Ripon *v.* Hobart, *supra*, and stated further:

"No case has been referred to in which the erection of a livery stable has been enjoined, where the fact that it would be a nuisance was denied; and where it had not been ascertained to be such by a proper judicial inquiry before the injunction was awarded. And so far as my researches have gone, Lord Brougham is entirely correct in his statement in the Earl of Ripon case, *supra*, that no instance can be produced of the interposition by injunction in the case of an eventual or contingent nuisance. (Cleveland *v.* Citizens Gas Co., 20 N. J. Eq. 201; Duncan *v.* Hayes, 22 *ib.* 25; Rhodes *v.* Dunbar, 57 Pa. St. 274; Wood on Nuisances, Sec. 789.)"

In the case of McLaughlin *et al. v* The President and Trustees of Lamasco City, 6 Ind., decided by the Supreme Court of the State of Indiana in 1855, the Court held:

"In such cases of conflicting evidence and the injury to the public doubtful, if not imaginary, an injunction should not be granted. (2 Story Eq. 271, Note 1, title, 'Injunction.') So when the alleged nuisance is merely eventual or contingent, courts will not grant an injunction."

In the case of Spooner *v.* McConnell *et al.*, 1 McLean, (U. S.), 337, it was held by McLean, Circuit Judge:

"That courts of chancery will not interfere by injunction to prevent threatened wrong, unless the danger is

imminent and the injury irremediable in any other form." * * * And further, "chancery does not deal with abstractions or contingencies, but with practicable rights, and to prevent impending wrongs. The complainant alleges generally, that he will be injured in his property by the construction of the dam, and on these grounds prays an injunction; but he does not show how he will be injured. This is necessary that the court may judge whether the wrong complained of entitles him to an injunction. Every wrong done in this way on which an action may be sustained will not entitle the party to an injunction. The facts must present a case which cannot be adequately redressed in any other form."

In that case Judge McLean further stated as follows:

"If the injury which the complainant presents should result from the operation of this public improvement, he may have a remedy in another form. He may be enabled either by an appeal to the legislature of the State, or by an action at law, to obtain a redress of the grievances complained of; but in the form and under the circumstances in which the case is before this Court, he is not entitled to the process of injunction."

The reasoning of the learned Judge in that case applies with equal force to the case at bar.

Sixth. Defendants further object to the granting of a preliminary or temporary injunction in this case for the reason that the apprehended pollution of the waters of the Mississippi River may never happen, and the apprehension of injury is a mere matter of opinion.

In the case of Thebaut *v.* Canova, 11 Fla. 143, the Supreme Court of Florida held:

"Where a bill for an injunction alleged that a steam-mill, if put into operation, would unavoidably and in itself become a nuisance, this allegation was held to be

nothing but an expression of opinion by the plaintiff upon which the court should not retain the injunction, but should leave the parties to their remedy at law."

In the case of the City of Hutchinson *et al. v.* Delano, 46 Kas. p. 345, the Supreme Court of that State, all of the Justices concurring, in the opinion by Chief Justice Horton, held:

"The apprehended fouling or pollution of a stream of water in the future, by the sewage of a part of a city from sewers, which have been legally, scientifically and properly constructed, but which has not yet taken place, and of which there is no immediate or imminent danger, and which depends upon a contingency that may or may not happen, does not present a case for an injunction;" citing the following cases: (Aqueduct Board *v.* Passaic, N. J. 1890, 20 Atl. Rep. 54; Coach Co. *v.* Horse Car Co., 29 N. J. Ex. 299; Stitt *v.* Hilton, 31 N. J. Eq. 285; Del. Lack & West. R. R. Co. *v.* Stock Yards Co., *ib.* 605; Hagerty *v.* Lee, 45 *ib.* 255; Stoudinger *v.* City of Newark, 28 *ib.* 187; Merrifield *v.* Worcester, 110 Mass. 216; Brookline *v.* Mackintosh, 133 *ib.* 215; Morgan *v.* City of Binghamton, 102 N. Y. 500; Dunn *v.* City of Austin, Texas, 1889, 11 S. W. Rep'r 1125; High Injs., Sec. 742; Wood Nuis., Sec. 796–797.) See also 33 American and English Corporation Cases, p. 87.

In the case of Newark Aqu. Board *v.* The City of Passaic *et al.* cited *supra*, the syllabus is as follows:

"Upon bill filed to restrain the construction of public sewers, by the operation of which it was alleged, the water supplied by the complainant to the inhabitants of Newark would be injuriously polluted, when defendants' answer and accompanying affidavits rendered it doubtful whether the apprehended nuisance would arise.—Held, that the preliminary injunction was thereupon properly refused." Citing Citizens' Coach Co. *v.* Camden Horse

R. R. Co., 2 Stew. Eq. 299; Stitt *v.* Hilton, 4 Stew. Eq. 285; Del. Lack. & West. R. R. Co. *v.* Central Stock Yards & Transit Co., 16 Stew. Eq. 605; Hagerty *v.* Lee, 18 Stew. Eq. 255. In this case eight judges concurred, including Chief Justice Dixon, and two judges dissented.

In the case of Morgan *v.* Binghamton, 102 N. Y., the Court of Appeals of the State of New York, in an opinion by Finch, Justice, in which all of the judges concurred, it was held as follows:

"A court of equity will not interfere by injunction with the plan of improvements adopted in good faith by municipal authorities, and within the scope of their authority, where the injury therefrom is doubtful, eventual, or contingent. To justify such an interference, it must be shown that injury, material and actual, is a necessary or probable result."

In the case of Hagerty *v.* Lee, *et al.*, 45 N. J. Eq. p. 255, the Court of Errors and Appeals of New Jersey, all the judges concurring, held:

"It is impossible to emphasize too strongly the rule so often enforced in this court, that a preliminary injunction will not be allowed where either the complainant's right, which he seeks to have protected, *in limine*, by the interlocutory injunction, is in doubt, or where the injury which may result from the invasion of that right is not irreparable;" citing Morris and Essex R. R. Co. *v.* Pruden, 5 C. C. Gr. 530-541; Citizens Coach Co. *v.* Camden Horse Car R. R. Co., 2 Stew. Eq. 299; Del. Lack. & West. R. R. Co. *v.* Central Stock Yards Co., 16 Stew. Eq. 605. One of the latest decisions in the English courts to the same effect is, The Mogul Steamship Co., *v.* McGregor, Gow & Co. L. R. (15 Q. B. Div.) 476.

In the case of Hensley *v.* Bew, 53 N. J. Eq., p. 242, Court of Errors and Appeals of New Jersey, all of the judges concurring, Held:

"In equity procedure, it is always settled that an injunction to restrain a nuisance will issue only in cases where the fact of nuisance is made out upon determinate and satisfactory evidence. If the evidence be conflicting and the injury be doubtful, that conflict and doubt, will be a ground for withholding injunction. And where interposition by injunction is sought, to restrain that which is apprehended will create a nuisance of which the complainant may complain, the proofs must show upon such a state of facts as will manifest the danger to be real and immediate." Newark Aqe. Board *v.* Passaic, 18 Stew. Eq., 393–402.

This is a recent case decided in 1895 and fully sustains current of opinions upon this subject, not only in New Jersey, but in all the States of the Union.

It is unnecessary to multiply quotations from authorities on this subject. The rule laid down in New Jersey is the same in all the State courts and in all United States courts, as well as in the text-books.

The following adjudicated cases are cited :

McHugh *v.* Boston, H. & E. R. R. Co. *et al.*, 66 Burber's Supreme Court Reps. p. 612.

Henry B. Turner *v.* The People's Ferry Co., 22 Blatchford's C. C. Reps. p. 272.

Ormerod *v.* N. Y. W. S. & B. R. R. Co., 21 *ib.* 106.

Jones *et al. v.* Hodges, 1 Holmes (U. S.), p. 37.

Home Ins. Co. *v.* Nobles *et al.*, 63 Fed. Rep'r, p. 642, (C. C. E. D. Pa.) Sept., 1894.

Farley *v.* Gate City Gas Light, 31 S. E. 193 ; 195 Ga. 323.

Columbia Ave. Saving Fund S. D. T. & T. Co. *v.* Prison Commission (C. C. W. D. Ga.) 52 Fed. Rep'r, 108.

Seventh. Defendants further object to the granting of a preliminary or temporary injunction in this case for the

reason that the Complainant has been guilty of *laches*—of unreasonable and inexcusable delay in asserting its right, if any it ever had, to enjoin an apprehended danger.

LACHES.

The Sanitary District of Chicago, in its separate answer filed herein, calls attention to the fact that the legislature of the State of Illinois, on the 29th day of May, 1889, passed an act under which the Sanitary District of Chicago was created. That this Sanitary District duly officered has been in existence since January, 1890. At that time this Defendant entered upon the duties imposed by said act. That the right of way was secured, and wherever necessary, condemnation proceedings were had, and that all of its acts have been open and notorious, whereof all people and courts are required to take notice. That there are a number of lines of railway passing between the City of Chicago and the City of St. Louis, one of the cities in the State of Complainant, near to and in plain sight of the work in progress from time to time, on said canal. That the work performed by this Defendant was a matter of notoriety to all persons travelling said roads, and that such has been the magnitude of said work, and the difficulties overcome, that it became the subject of innumerable publications, and that the Sanitary District of Chicago has expended upon said work more than thirty-three millions of dollars, openly and of record. That prior to the filing of the complaint herein, the work was practically completed and that on the 17th day of January, 1900, at 11.16 A. M., which was prior to the time when Complainant presented its motion for leave to file its Bill of Complaint herein, and five days prior to the time that said bill was filed by leave of this Court, the waters of

Lake Michigan were turned into the Des Plaines River; and that the amount of water discharged since that time into said river has been equal to 300,000 cubic feet per minute. Wherefore, by reason of these facts, Defendants contend that the Complainant had notice of the premises and of the great work and of the great expenditures of public money, and having such notice, and having so waited as aforesaid, Complainant has been guilty of *laches*, and has slept upon its rights, if any it ever had, and is now estopped to urge its cause.

Laches is defined to be unreasonable delay; or the neglect to do at the proper time, what by law or duty ought to be done; or the failure to prosecute a claim within a proper and reasonable period. Another definition of *laches* is, "inexcusable delay in asserting a right." 12 Encyc. P. & P., p. 829. 2 Bouv. L. Dic. Tit. Laches.

The Complainant has been guilty of unreasonable delay in asserting its right to enjoin an apprehended danger. If the Complainant relied upon this ground to enjoin the construction of this work, it could have made its case just as strong ten years ago, as at the time of the commencement of this suit, and it could then have been adjudged by this Court or by any court having jurisdiction, whether the threatened injury to Complainant was such as to entitle it to an injunction to prevent the construction of the work. If Complainant had presented this cause within a reasonable time, the vast expenditure of money which has been made by the said Sanitary District, would have been saved. Hence, we hold that the delay of Complainant in asserting its right to enjoin the completion of this work, if it ever had such right, upon the ground of apprehended danger, is inexcusable; that its delay is unreasonable, and that it has neglected to do at the proper time, what by equity and good conscience, it

should have done. It is unreasonable that Complainant should stand by and see Defendants expend many millions of dollars upon the construction of a great public work, if it believed such work would be an injury to it, without asserting any objection thereto, until after the work had been completed, and many millions of dollars expended thereon. Such delay is inexcusable; and by thus failing to assert its objections, within a proper and reasonable period, it is guilty of *laches*. It is too late now for the Complainant, which has not done equity, to demand equitable relief. "He who seeks equity, must do equity," and, "Equity aids the vigilant, not the slothful," are maxims of equity of universal application.

In the case of Smith *v.* Clay, Ambl. 645, quoted in Delorane *v.* Brown, 3 Bro. C. C. 640, Note, Lord Camden said of the English equity court:

"Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence; where these are wanting the court is passive and does nothing. *Laches* and neglect are always discountenanced, and therefore from the beginning of this jurisdiction there was always a limitation to suits in this court. It is and always has been the practice of courts of equity to remain inactive where a party seeking their interference has been guilty of unreasonable *laches* in making his application. Calhoun *v.* Millard, 121 N. Y. 81."

Equity can only help the diligent. The principle laid down by Lord Camden more than a century ago is still the guide of the court in cases where the party seeking its aid has been guilty of great delay. Norfolk, etc., Hosiery Co. *v.* Arnold, 49 N. J. Eq. 397.

A frequent application of the maxim is in bills for injunction; and it is well settled that even when the applicant had originally ample grounds for equitable relief,

this may be denied him if he delays unduly. (See 11 Encyc. of Law, 2d Ed. p. 166, and numerous American and English authorities cided in Note 1.) The citations are as follows:

Laches a Bar to Injunction—England.—Cooper *v.* Hubbuck, 30 Beav. 160; Graham *v.* Birkenhead, etc., R. Co., 2 Macn. and G. 146; Lord *v.* Sutcliffe, 2 Sim. 273; Senior *v.* Pawson, L. R. 3 Eq. 330.

Massachusetts.—Fuller *v.* Melrose, 1 Allen (Mass.) 166; Tash *v.* Adams, 10 Cush. (Mass.) 252.

Nebraska.—North *v.* Platte County, 29 Neb. 447.

New Jersey.—East Newark Co. *v.* Gilbert, 12 N. J. Eq. 78.

Pennsylvania.—Grey *v.* Ohio, etc., R. Co., 1 Grant's Cas. (Pa.) 412.

In North *v.* Platte County, 29 Neb. 447, the court in denying a taxpayer's application to enjoin the payment of county bonds, observed:

"The action was brought nine years after the bonds were issued and delivered, and the plaintiff shows by his petition that he has been a taxpayer of Platte County during many years past. There are many cases holding that such delay and laches will defeat an action where relief would have been granted had the application been seasonably made. Marshall County *v.* Schenck, 5 Wall. (U. S.) 772; Clay County *v.* Savings Soc., 104 U. S. 579; Johnson *v.* Stark County, 24 Ill. 75; Keithsburg *v.* Frick, 34 Ill. 421; Com. *v.* Pittsburg, 43 Pa. St. 391; Bradley *v.* Franklin County, 65 Mo. 638; Burr *v.* Carbondale, 76 Ill. 455; Burlington, etc., R. Co. *v.* Saunders County, 16 Neb. 123."

When the Complainant has, by his delay, induced or suffered the respondent to incur expenses or enter into arrangements of a burdensome character, a court of equity will consider that he is guilty of such *laches* as preclude him from obtaining relief. (See 12 Amer. and Eng. Encyc. of Law, p. 549, and numerous authorities cited

therein under Note 1). Among the authorities cited are Hollingsworth *v.* Fry, 4 U. S. (4 Dall.) 345; Mason *v.* Crosby, 1 Woodb. and M. (U. S.) 342, and cases in Alabama, Pennsylvania, Massachusetts, New Jersey, Wisconsin, and Vermont.

In the case of Sheldon *v.* Rockwell, 9 Wis. 166, the Supreme Court of Wisconsin held:

"If a land owner stands by while an adjoining proprietor is erecting a mill and constructing a drain, and for 19 years does not make any claim, he is thereby barred from objecting to the reconstruction of the dam after it has been carried away by high water; for the plaintiff, by his silence and acquiescence, has invited and encouraged the defendants to expend their time and means in the construction and repairing of the dam and the mills and machinery used in connection with it."

"If a land owner stands by and permits money to be expended in the construction of a drain under a drain act, he will not thereafter be allowed to attack the proceedings for laying out the drain on the ground of irregularity. State *v.* Little, 49 N. J. L. 182."

In that case the court said:

"Where delay has permitted the expenditure of money in the furtherance of enterprises of a quasi public nature, or where under cover of a proceeding of a public nature, individuals have been induced by the delay to expend their own money or labor, the writ (of *certiorari*) will be dismissed. There must be reasonable diligence shown in the prosecution where other interests are involved in the delay." Citing State *v.* Logan, N. J. L. 421; State *v.* Blake, 35 N. J. L. 208; Haines *v.* Campion, 18 N. J. L. 49.

Counsel for defendants concede that it is the general rule that *laches* on the part of its officers is not imputable to the government in its character of sovereign. There

is, however, an exception to this rule. If where the government descends into business transactions and where those with whom it deals in such transactions, are injured by the *laches* of its officers, the government is precluded the same as an individual. In such cases the defense of *laches* is as available as if the complainant were a private individual. See Jay Cooke *v.* United States, 91 U. S. 389. In that case, Chief Justice Waite, speaking for the court, said: "Still a government may suffer loss through the negligence of its officers. If it comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals."

A court of equity requires reasonable diligence on the part of those seeking its aid, and discourages *laches* by making it a bar to relief; therefore, the plaintiff on filing his bill for an injunction, must make it appear that he has used reasonable diligence in invoking the aid of the court, otherwise the relief will be denied. See 10 Encyc. of Amer. and Eng. Law, p. 802, and a large number of authorities therein cited under Note 1, in support of this doctrine, some of which are cases decided by the Supreme Court of the United States. Commenting upon these authorities, the author of the text cited says: "This rule would be applicable in all cases where the plaintiff knowingly prevented (permitted?) the defendant to expend considerable sums of money in making improvements or erections complained of." Smith *v.* Clay, Ambl. 645, in which it was stated: "Nothing can call forth this court into activity but conscience, good faith and reasonable diligence. When these are wanting the court is passive and does nothing."

In the case of Griffin *v.* Augusta, etc., R. R. Co., 70 Ga. p. 164, the Supreme Court of Ga., said: "One cannot stand by and suffer another to expend large amounts

of money on his land as a part of a great system of improvement, and then stop by injunction the entire system until he is paid."

In the case of Logansport *v.* Uhl, 99 Ind. 531, the Supreme Court of Indiana, held as follows: "Where the owner of a water power stands by, and, not objecting, permits a city, without first assessing and paying his damages, to erect works for a water supply by drawing water from the stream and thus diminishing his power, he creates an equitable estoppel, so that he will not be protected by injunction, but will be left to assert his rights at law."

In the case of Clark *v.* Cambridge and Arapahoe Irrigation and Improvement Co., 45 Neb. 808, the Supreme Court of Nebraska said:

"It is clearly established by the proofs that the construction of the irrigating ditch was undertaken and carried out in good faith in accordance with the purpose of its creation, at a cost of many thousands of dollars, and in the belief on the part of its promoters and managing officers that it was entitled to divert the water of the Republican river. It is also practically undisputed that the plaintiff was from the first advised of both the undertaking and the purpose of the defendant, and it is certain that he interposed no objection thereto until after the substantial completion of the work. The rule which denies relief in equity to one who has slept upon his rights applies in all its force to cases where the defendant is engaged in a work of public interest. In fact there is no principle more firmly established in the jurisprudence of this country than that a suitor who has by his *laches* made it impossible to restrain the completion or use of public works without great injury to his adversary or the public, will be left to pursue his ordinary legal remedies." (Citing Erie R. Co. *v.* Del., L. & W. R.R. Co., N. J. Eq. 283; Traphagan *v.* Mayor of Jersey City, 21 N. J. Eq. 206; Campbell *v.* In-

dianapolis & V. R. Co., 110 Ind. 490; Midland R. Co. *v.* Smith, 113 Ind. 233; Organ *v.* Memphis & L. R. Co., 11 S. W. Rep'r (Ark.) 96; Goodwin *v.* Cincinnati & Whitewater Canal Co., 18 O. St. 169; Curtis *v.* LaGrande Water Co., 20 Ore. 34; High Injs. sec. 643; Rorer, Railroads, 741–757; Wood, Railway Law, 794.) "And the same principle is recognized by this court in Mosser *v.* Seeley, 10 Neb. 460; State *v.* Graham, 21 Neb., and Forbes *v.* McCoy, 24 Neb. 702."

Applying the rule which is conclusively established by the authorities which we have cited above, the Complainant in the case at bar, by its inexcusable delay has been guilty of *laches*, and it has created an equitable estoppel, so that it cannot now be protected by injunction. This Court or any other court having jurisdiction, must leave the Complainant to assert its rights at law. If at law, the Complainant establishes before a jury, actual damages; and, if it appears that such damage will be of a continuing nature, it might then apply for an injunction, but not before.

Conclusion.

It is conceded by Defendants that the pollution of the waters of a stream, which renders such waters unfit for domestic, manufacturing, agricultural and other uses, may become an injury to the riparian proprietors, and a nuisance, which a court of equity, having jurisdiction of the parties and the subject-matter, may abate by injunction if a timely and proper application be made. But Defendants deny in their answer that the turning of the sewage of the City of Chicago or of the Sanitary District of Chicago, into the Des Plaines River, in the County of Will, in the State of Illinois, accompanied as it is with 300,000 cubic feet per minute of the pure water of Lake

Michigan, which pure water is twenty times as great in quantity as the sewage which it carries with it, will pollute the waters of the Mississippi River, below the mouth of the Illinois River, which is over 300 miles by river, from the point where said water and sewage are turned into the Des Plaines River. The Bill of Complaint does not allege that the waters of the Mississippi River, along the territory of Complainant, have been polluted; but it is alleged that said waters will be polluted, if said sewage is turned into the Des Plaines River. This latter allegation is but the expression of an opinion, and is not the allegation of a fact. The expression of the opinion by Defendants that no pollution of the waters of the Mississippi River will be produced by their acts, has, and should receive equally as great weight with this Honorable Court, as should the expression of Complainant's opinion, and much greater weight, since Defendants cite the fact, which is so well known that this Court will take cognizance thereof without proof, that all the cities and towns on the Mississippi and Missouri Rivers and their tributaries, above the City of St. Louis, have heretofore discharged their sewage into said rivers and their tributaries and that it has been carried and is now being carried into the Mississippi River, below the mouth of the Missouri River, and that this vast region, whose natural and inevitable drainage is through the Mississippi River which forms the eastern boundary of the State of Missouri, is inhabited by more than fifteen million people.

Attention of the Court is called to another fact, which is stated in the answers of the Defendants, in this connection, namely, that for more than twenty years past the sewage of the City of Chicago has been pumped into the Illinois and Michigan Canal and discharged into the Des Plaines River, and has flown into the Illinois River.

Notwithstanding this fact, which cannot and will not be denied, and the further fact that the drainage of cities and towns above the mouth of the Missouri River, having a population of more than fifteen million people, has been, from a time whereof the memory of man runneth not to the contrary, into the Mississippi River, along the eastern boundary of the State of Missouri, the Bill of Complaint alleges that the cities and towns in said State, below the mouth of the Illinois River by their waterworks systems, "furnish the inhabitants of said cities and towns with an adequate supply of pure and wholesome water, fit and healthful for drinking and all other domestic purposes and uses, from the said Mississippi River, so flowing in its ancient, accustomed and natural course." If as it appears, no pollution of the waters of the Mississippi River has heretofore been produced, notwithstanding the vast area which it has drained, what injury can possibly result from the emptying into the Des Plaines and Illinois Rivers of 300,000 cubic feet per minute of pure water from Lake Michigan?

The Sanitary District of Chicago has expended of public funds about $34,000,000 in the construction of this canal. It has devised, constructed and completed the greatest municipal enterprise for drainage and sanitary purposes, ever undertaken in any country in the world. The vast expenditure of public money which has been required for its completion, is but a bagatelle, compared with the incalculable benefit which will be enjoyed by the people of Chicago and Cook County for all time to come. Those people ought not to be deprived of that benefit by injunction, unless it shall hereafter appear, by facts which time and actual experience develop and after the most thorough investigation by a court of competent jurisdiction, that other people's rights have been imperiled, and

that upon balancing the inconveniences or injuries, greater injury will be inflicted by refusing an injunction than by granting it.

If the City of Chicago is permitted to use the great drainage canal, which it has constructed, it will be the best drained and best watered city in the world. Its population, which in the past has had a most phenomenal increase, will soon exceed that of any city in the Union, and we may confidently expect that, within the lifetime of those now living, it will become the commercial centre of the world. In view of such vast possibilities for this great city, Defendants venture to suggest to this Honorable Court, that it should not, by its injunction, prevent the complete and permanent utilization of the greatest sanitary enterprise ever constructed.

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